

# ***SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE***

## ***ADMINISTRATIVE RULES REVIEW***

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#### ***2007 Legislative Session***

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# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.01 - IDAHO INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The text of pending Rule 700 of this docket has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. Proposed Income Tax Rule 700.06.c. is amended to remove the reference to Income Tax Rule 701. Rule 701 has been deleted from this docket and Rule 702 will be renumbered to 701.

With the exception of the above referenced section the pending rules are being adopted as proposed. The complete text of the proposed rules was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 435 through 471.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Janice Boyd at (208) 334-7530.

DATED this 2nd day of November, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## **IDAHO STATE TAX COMMISSION** **Idaho Income Tax Administrative Rules**

**Docket No. 35-0101-0601**  
**PENDING RULE**

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**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 031:** Amend Income Tax Rule 031 to include the exception in determining an individual's Idaho residency status for a nonresident alien, since by statute these individuals must be nonresidents. Remove language that is now obsolete. The amendments conform to Idaho Code section 63-3013, as amended in House Bill 457, passed by the 2006 Legislature.

**Rule 075:** Amend Income Tax Rule 075 to add the table for the income tax brackets and rates for calendar year 2006.

**Rule 121:** Amend Income Tax Rule 121 to clarify the addback for state and local income and sales taxes when limitations are imposed in computing the federal itemized deduction amount. To avoid major rounding differences, modify the calculation of the addback so that the percents are rounded to four digits to the right of the decimal point, rather than to the nearest whole percent.

**Rule 171:** Amend Income Tax Rule 171 to correct the examples for the change in the holding period of real property consistent with 2005 legislative changes in House Bill 165, which changed the holding period for real property from 18 months to 12 months. Add a reference to Income Tax Rule 173 for the determination of the holding period of the interest in income of a pass-through entity.

**Rule 173:** Amend Income Tax Rule 173 to clarify the time period that an interest in income of a pass-through entity must be met. Include beneficiaries of trusts and estates in the discussion of the gross income limitation. Modify and add examples to better clarify the calculations.

**Rule 255:** Amend Income Tax Rule 255 to modify the calculation of the proration percentage so that the percents are rounded to four digits to the right of the decimal point, rather than to the nearest whole percent to avoid major rounding differences.

**Rule 280:** Amend Income Tax Rule 280 to include language that gives the Tax Commission the authority to require an alternative method for determining Idaho source income of a partnership when the apportionment formula does not fairly represent the extent of the business activity in Idaho. Add language to allow the exclusion of a factor or employment of any other method that fairly represents the extent of business activity in Idaho in such cases.

**Rule 290:** Amend Income Tax Rule 290 to delete information moved to new Income Tax Rule 291. Amend the rule to reflect the limited information contained in the rule, which is the election available to a qualifying individual to have an entity pay the tax when such

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**IDAHO STATE TAX COMMISSION**  
**Idaho Income Tax Administrative Rules**

**Docket No. 35-0101-0601**  
**PENDING RULE**

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individual is an officer, director, shareholder, partner, member, or beneficiary of the entity.

**Rule 291:** Promulgate new Income Tax Rule 291 to move information from Income Tax Rule 290 that addresses income reportable to Idaho when the income tax is paid by an entity for an officer, director, shareholder, partner, member, or beneficiary. Add information to address deductions that are not allowed in the computation.

**Rule 300:** Amend Income Tax Rule 300 to clarify that a corporation that is protected by federal Public Law 86-272 is exempt from the corporate income tax, including the minimum tax.

**Rule 700:** Amend Income Tax Rule 700 to address taxpayers entitled to the credit, taxes eligible for the credit, and limitations on claiming the credit. Modify the calculation of the credit so that the percents are rounded to four digits to the right of the decimal point, rather than to the nearest whole percent to avoid major rounding differences.

**Rule 701:** Promulgate new Income Tax Rule 701 to address the modifications to the other state's adjusted gross income and tax required when computing the credit for taxes paid to another state.

**Rule 702:** Promulgate new Income Tax Rule 702 to address how a part-year resident determines the credit for taxes paid to another state.

**Rule 745:** Amend Income Tax Rule 745 with regard to a taxpayer who has multiple activities to be more consistent with the statute that requires the taxpayer to compute qualifying new employees based on the portion of the Idaho business that qualifies as a revenue-producing enterprise.

**Rule 747:** Amend Income Tax Rule 747 to be consistent with House Bill 28, passed by the 2005 Legislature, which modified the net income limitation to be based on the net income of the taxpayer's trade or business. Income Tax Rule 747 needs to use consistent terms with regard to this limitation. Information regarding taxpayers with multiple activities is no longer relevant and is deleted because the calculation is based on the taxpayer's entire business, not just that portion that relates to a revenue-producing enterprise.

**Rule 775:** Promulgate new Income Tax Rule 775 to discuss the credit for live organ donation expenses, which was allowed in House Bill 745, passed by the 2006 Legislature. The rule addresses the limitations of the credit and defines live organ donation and live organ donation expenses.

**Rule 799:** Amend Income Tax Rule 799 to add to the list of priority of credits the new credit for live organ donation expenses allowed by House Bill 745, which was passed by the 2006 Legislature.

**Rule 801:** Promulgate new Income Tax Rule 801 to discuss persons required to file income tax returns. The rule addresses individuals who make elections under Idaho Code section 63-3022L, corporations included in a unitary group, and taxpayers protected under Public Law 86-272.

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**Idaho Income Tax Administrative Rules**

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**PENDING RULE**

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**Rule 830:** Amend Income Tax Rule 830 to allow information returns to be submitted through electronic filing.

**Rule 855:** Amend Income Tax Rule 855 to clarify that taxpayers whose business activities in Idaho are protected under Public Law 86-272 are not required to pay the permanent building fund tax.

**Rule 870:** Amend Income Tax Rule 870 to more clearly state that a person who withholds Idaho income tax must have an Idaho withholding account number.

**Rule 872:** Amend Income Tax Rule 872 to add the provision that an employer who owes less than \$50 monthly or \$600 annually may be allowed to remit tax withheld annually. Clarify that changes to filing cycles take effect on January 1 of the following year.

**Rule 874:** Amend Income Tax Rule 874 to clarify that Forms W-2 are not required if the employer had no employees and did not pay wages or withhold tax. Specify the due date for filing electronic copies of Forms W-2.

**Rule 940:** Promulgate new Income Tax Rule 940 to provide definitions for rules relating to the Idaho Small Employer Incentive Act of 2005 as modified by House Bill 754 passed by the 2006 Legislature.

**Rule 941:** Promulgate new Income Tax Rule 941 to discuss the coordination of the of the Idaho Small Employer Incentive Act of 2005 as modified in 2006 with the Idaho Corporate Headquarters Incentive Act of 2005, pass-through entities, the effects of reorganizations, mergers and liquidations, relocations of facilities, and unitary sharing of credits.

**Rule 942:** Promulgate new Income Tax Rule 942 to discuss the Idaho Small Employer tax incentive criteria as modified in 2006 legislation and the certification requirements.

**Rule 943:** Promulgate new Income Tax Rule 943 to discuss the Idaho Small Employer Investment Tax Credit as modified in 2006 legislation.

**Rule 944:** Promulgate new Income Tax Rule 944 to discuss the Idaho Small Employer Real Property Improvement Tax Credit as modified in 2006 legislation.

**Rule 945:** Promulgate new Income Tax Rule 945 to discuss the Idaho Small Employer New Jobs Tax Credit as modified in 2006 legislation.

**Rule 946:** Promulgate new Income Tax Rule 946 to discuss when recapture of the Idaho Small Employer incentives is required. The rule relates to the Idaho Small Employer Incentive Act of 2005 as modified by 2006 legislation.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal

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**IDAHO STATE TAX COMMISSION**  
**Idaho Income Tax Administrative Rules****Docket No. 35-0101-0601**  
**PENDING RULE**

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impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Janice Boyd (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 21st day of August, 2006.

Janice Boyd  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**031. ALIENS (RULE 031).**

Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)

**01. Idaho Residency Status.** For purposes of the Idaho Income Tax Act, an alien may be either a resident, part-year resident, or nonresident, except a nonresident alien as defined in Section 7701, Internal Revenue Code, shall be a nonresident. ~~The individual's residency status for federal income tax purposes does not determine the Idaho residency status of an alien taxpayer.~~ See Paragraph 031.01.b., of this rule. ( )

**a.** An alien shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)( )

**b.** A nonresident alien as defined in Section 7701, Internal Revenue Code, is a nonresident for Idaho. If a nonresident alien has elected to be treated as a resident of the United States for federal income tax purposes, he shall determine his Idaho residency status as provided in Paragraph 031.01.a., of this rule. ( )

**02. Computation of Idaho Taxable Income.** (3-20-97)

**a.** To compute the Idaho taxable income of an alien, the first step is to determine his

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## IDAHO STATE TAX COMMISSION Idaho Income Tax Administrative Rules

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taxable income. This will depend on whether the alien is a resident, nonresident, or dual status alien for federal income tax purposes. (3-20-97)

**b.** Once the alien's taxable income has been computed, the amount of income subject to Idaho income tax depends on the alien's Idaho residency status. In general, if the alien qualifies as an Idaho resident, he is subject to Idaho income tax on all his taxable income regardless of its source. If the alien qualifies as a part-year resident or nonresident of Idaho, the amount of his taxable income subject to Idaho income tax is determined pursuant to Section 63-3026A, Idaho Code, and Rules 250 through 259 of these rules. (3-20-97)

**c.** In the case of a nonresident alien who does not elect to be treated as a resident for federal income tax purposes, the standard deduction is zero (0). However, a nonresident alien who qualifies as a student or business apprentice eligible for the benefits of Article 21(2) of the United States - India Income Tax Treaty is entitled to the standard deduction amount as if he were a resident for federal income tax purposes provided he does not claim itemized deductions. (7-1-99)

**03. Filing Status.** An alien shall use the same filing status for the Idaho return as used on the federal return. If for federal income tax purposes a married alien files as a nonresident alien and does not elect to be treated as a resident, the married alien shall use the filing status married filing separate on the Idaho return. (3-30-01)

### **(BREAK IN CONTINUITY OF SECTIONS)**

## **075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).**

Section 63-3024, Idaho Code. (3-20-04)

**01. In General.** The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Subsection 075.03 of this rule. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-6-05)

### **02. Tax Computation.** (5-3-03)

**a.** The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

**b.** The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

**c.** For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2). (5-3-03)

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PENDING RULE

### 03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

#### a. For taxable years beginning in 1987 through 1999:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,000.00	\$0.00	2% of taxable income
\$1,000.00	\$2,000.00	\$20.00	4% of the amount over \$1,000.00
\$2,000.00	\$3,000.00	\$60.00	4.5% of the amount over \$2,000.00
\$3,000.00	\$4,000.00	\$105.00	5.5% of the amount over \$3,000.00
\$4,000.00	\$5,000.00	\$160.00	6.5% of the amount over \$4,000.00
\$5,000.00	\$7,500.00	\$225.00	7.5% of the amount over \$5,000.00
\$7,500.00	\$20,000.00	\$412.50	7.8% of the amount over \$7,500.00
\$20,000.00 or more		\$1,387.50	8.2% of the amount over \$20,000.00

(3-20-04)

#### b. For taxable years beginning in 2000:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,022.00	\$0.00	1.9% of taxable income
\$1,022.00	\$2,044.00	\$19.42	3.9% of the amount over \$1,022.00
\$2,044.00	\$3,066.00	\$59.28	4.4% of the amount over \$2,044.00
\$3,066.00	\$4,088.00	\$104.25	5.4% of the amount over \$3,066.00
\$4,088.00	\$5,110.00	\$159.44	6.4% of the amount over \$4,088.00
\$5,110.00	\$7,666.00	\$224.85	7.4% of the amount over \$5,110.00
\$7,666.00	\$20,442.00	\$413.99	7.7% of the amount over \$7,666.00
\$20,442.00 or more		\$1,397.74	8.1% of the amount over \$20,442.00

(3-20-04)

#### c. For taxable years beginning in 2001:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,056.00	\$0.00	1.6% of taxable income



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## IDAHO STATE TAX COMMISSION Idaho Income Tax Administrative Rules

**Docket No. 35-0101-0601**  
**PENDING RULE**

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1,056.00	\$2,113.00	\$16.90	3.6% of the amount over \$1,056.00
\$2,113.00	\$3,169.00	\$54.93	4.1% of the amount over \$2,113.00
\$3,169.00	\$4,226.00	\$98.25	5.1% of the amount over \$3,169.00
\$4,226.00	\$5,282.00	\$152.13	6.1% of the amount over \$4,226.00
\$5,282.00	\$7,923.00	\$216.57	7.1% of the amount over \$5,282.00
\$7,923.00	\$21,129.00	\$404.09	7.4% of the amount over \$7,923.00
\$21,129.00 or more		\$1,381.30	7.8% of the amount over \$21,129.00

(3-20-04)

d. For taxable years beginning in 2002:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,087.00	\$0.00	1.6% of taxable income
\$1,087.00	\$2,173.00	\$17.38	3.6% of the amount over \$1,087.00
\$2,173.00	\$3,260.00	\$56.50	4.1% of the amount over \$2,173.00
\$3,260.00	\$4,346.00	\$101.04	5.1% of the amount over \$3,260.00
\$4,346.00	\$5,433.00	\$156.46	6.1% of the amount over \$4,346.00
\$5,433.00	\$8,149.00	\$222.73	7.1% of the amount over \$5,433.00
\$8,149.00	\$21,730.00	\$415.59	7.4% of the amount over \$8,149.00
\$21,730.00 or more		\$1,420.60	7.8% of the amount over \$21,730.00

(3-20-04)

e. For taxable years beginning in 2003:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,104.00	\$0	1.6% of taxable income
\$1,104.00	\$2,207.00	\$17.66	3.6% of the amount over \$1,104.00
\$2,207.00	\$3,311.00	\$57.39	4.1% of the amount over \$2,207.00
\$3,311.00	\$4,415.00	\$102.64	5.1% of the amount over \$3,311.00
\$4,415.00	\$5,518.00	\$158.93	6.1% of the amount over \$4,415.00
\$5,518.00	\$8,278.00	\$226.25	7.1% of the amount over \$5,518.00

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## IDAHO STATE TAX COMMISSION Idaho Income Tax Administrative Rules

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**PENDING RULE**

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$8,278.00	\$22,074.00	\$422.16	7.4% of the amount over \$8,278.00
\$22,074.00 or more		\$1,443.06	7.8% of the amount over \$22,074.00

(3-20-04)

**f.** For taxable years beginning in 2004:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,129.00	\$0	1.6% of taxable income
\$1,129.00	\$2,258.00	\$18.06	3.6% of the amount over \$1,129.00
\$2,258.00	\$3,387.00	\$58.70	4.1% of the amount over \$2,258.00
\$3,387.00	\$4,515.00	\$104.98	5.1% of the amount over \$3,387.00
\$4,515.00	\$5,644.00	\$162.55	6.1% of the amount over \$4,515.00
\$5,644.00	\$8,466.00	\$231.41	7.1% of the amount over \$5,644.00
\$8,466.00	\$22,577.00	\$431.78	7.4% of the amount over \$8,466.00
\$22,577.00 or more		\$1,475.95	7.8% of the amount over \$22,577.00

(4-6-05)

**g.** For taxable years beginning in 2005:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,159.00	\$0	1.6% of taxable income
\$1,159.00	\$2,318.00	\$18.54	3.6% of the amount over \$1,159.00
\$2,318.00	\$3,477.00	\$60.26	4.1% of the amount over \$2,318.00
\$3,477.00	\$4,636.00	\$107.78	5.1% of the amount over \$3,477.00
\$4,636.00	\$5,794.00	\$166.89	6.1% of the amount over \$4,636.00
\$5,794.00	\$8,692.00	\$237.53	7.1% of the amount over \$5,794.00
\$8,692.00	\$23,178.00	\$443.29	7.4% of the amount over \$8,692.00
\$23,178.00 or more		\$1,515.25	7.8% of the amount over \$23,178.00

(4-11-06)

**h.** For taxable years beginning in 2006, as calculated on June 7, 2006:

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## IDAHO STATE TAX COMMISSION Idaho Income Tax Administrative Rules

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**PENDING RULE**

IF IDAHO TAXABLE INCOME IS			IDAHO TAX
At least	But less than	Is	Plus
<u>\$0.00</u>	<u>\$1,198.00</u>	<u>\$0</u>	<u>1.6% of taxable income</u>
<u>\$1,198.00</u>	<u>\$2,396.00</u>	<u>\$19.17</u>	<u>3.6% of the amount over \$1,198.00</u>
<u>\$2,396.00</u>	<u>\$3,594.00</u>	<u>\$62.30</u>	<u>4.1% of the amount over \$2,396.00</u>
<u>\$3,594.00</u>	<u>\$4,793.00</u>	<u>\$111.43</u>	<u>5.1% of the amount over \$3,594.00</u>
<u>\$4,793.00</u>	<u>\$5,991.00</u>	<u>\$172.53</u>	<u>6.1% of the amount over \$4,793.00</u>
<u>\$5,991.00</u>	<u>\$8,986.00</u>	<u>\$245.62</u>	<u>7.1% of the amount over \$5,991.00</u>
<u>\$8,986.00</u>	<u>\$23,963.00</u>	<u>\$458.30</u>	<u>7.4% of the amount over \$8,986.00</u>
<u>\$23,963.00 or more</u>		<u>\$1,566.59</u>	<u>7.8% of the amount over \$23,963.00</u>

( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code.

(3-20-97)

**01. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

**a.** Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

**b.** Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

**02. Military Compensation for Service Performed Outside Idaho.** As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

**03. Standard or Itemized Deduction.** As provided in Section 63-3022(j), Idaho

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Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back shall be computed by dividing the amount of ~~limited~~ itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years beginning in or after 2007, this percent shall be ~~rounded to the nearest whole percent. For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%)~~ calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number (\$10,000/\$15,000 = 66.666% = .6667). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped (\$10,000/\$30,000 = 33.333% = .3333). This percent is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. ~~(4-11-06)( )~~

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)

d. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

**04. Social Security and Railroad Retirement Benefits.** As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

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ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

**05. Self-Employed Worker's Compensation Insurance Premiums.** As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

**06. Retirement Benefits.** As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

**07. Insulation of an Idaho Residence.** As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

**08. Alternative Energy Devices.** As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

**09. Household and Dependent Care Services.** As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

**10. Household Deduction for Elderly or Developmentally Disabled Dependents.** As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

**11. Reparations to Displaced Japanese Americans.** As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

**12. Capital Gains.** As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified property. (3-20-97)

**13. Adoption Expenses.** As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

**14. Idaho Medical Savings Account.** As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying

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contributions to and interest earned on an Idaho medical savings account. (4-5-00)

**15. Idaho College Savings Program.** As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

**16. Health Insurance Costs.** A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

## **(BREAK IN CONTINUITY OF SECTIONS)**

**171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).** Section 63-3022H, Idaho Code. (3-20-97)

**01. Timber.** As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

**a.** Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

**b.** Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

**02. Holding Periods.** (3-20-97)

**a.** In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow the definitions provided by Section 1223, Internal Revenue Code. See Rule 173 of these rules for the determination of the required holding period for an interest in income of an S corporation or partnership. ~~(7-1-98)~~(\_\_\_\_) (7-1-98)

**b.** Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. Nonqualifying property includes: (7-1-98)

**i.** Real or tangible personal property not having an Idaho situs at the time of the exchange; and (7-1-98)

**ii.** Tangible personal property not used by a revenue-producing enterprise. (7-1-98)

**c.** Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding

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period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)

**d.** Examples of nonqualifying property. (7-1-98)

i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ~~fourteen ten~~ (140) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for ~~eighteen twelve~~ (182) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-15-02)(\_\_\_\_)

ii. Assume the same facts as in the example in Subsection 171.02.e.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least ~~eighteen twelve~~ (182) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (3-15-02)(\_\_\_\_)

**03. Holding Periods of S Corporation and Partnership Property.** (7-1-98)

**a.** Property Distributed by an S Corporation to a Shareholder or a Partnership to a Partner. The holding period of property received from an S corporation or partnership includes the S corporation's or partnership's holding period, limited to the length of time the shareholder or partner held his interest in the income of the S corporation or partnership. See Subsection 173.02 of these rules. (3-20-97)

**b.** Property Contributed by a Shareholder to an S Corporation or a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period, ~~limited to the length of time~~ and the shareholder or partner ~~has~~ held his interest in the S corporation or partnership for the required holding period. (7-1-98)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).**

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Section 63-3022H, Idaho Code. (3-20-97)

### 01. In General. (3-20-97)

a. Qualified property held by an S corporation or partnership may be eligible for the Idaho capital gains deduction. The deduction is claimed on the return of an individual shareholder or individual partner. (3-20-97)

b. Partnerships and S corporations electing to pay the tax for an individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (4-5-00)

### 02. ~~Limitation of~~ Interest in Income of a Pass-Through Entity Limitation. (3-20-97)( )

a. An individual may claim an Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation or partnership only to the extent that he held his interest in income of the S corporation or partnership for the required holding period. A shareholder's interest in income of the S corporation is his pro rata share of the income or loss. A partner's interest in income of the partnership is his distributive share of partnership profits. ~~The individual must also meet any gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property.~~ (3-20-97)( )

b. Example. A shareholder in an S corporation had a twenty-five percent (25%) interest in income in ~~year one (1) 2003. At the beginning of year two (2),~~ On January 10, 2005, the shareholder's ~~ownership~~ interest in income increased to fifty percent (50%). ~~Fifteen (15) months later In September 2005,~~ the S corporation recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property held since ~~year one (1) 2003. The shareholder reports fifty percent (50%) of the gain on his tax return for the year of sale, but is entitled to a capital gains deduction on only twenty-five percent (25%) of the total gain. His capital gains deduction is limited to twenty-five percent (25%) of the gain since he did not hold his fifty percent (50%) ownership interest for the full eighteen (18) months preceding the date of the sale of the property.~~ Fifty percent (50%) of the gain, or ten thousand dollars (\$10,000) flows to the shareholder for the year of the sale to be reported on his individual income tax return based on his fifty percent (50%) interest in income. The shareholder did not hold his fifty percent (50%) interest in income for twelve (12) months, the required holding period. Therefore, his capital gains from qualified property is limited to his qualifying interest in income of twenty-five percent (25%) of the total gain, or five thousand dollars (\$5,000). If the shareholder had no other qualifying capital gains or losses, his capital gains deduction is three thousand dollars (\$3,000) computed as follows: (\$20,000 total gain X 25% qualifying interest X 60% = \$3,000 Idaho capital gains deduction.) (3-15-02)( )

c. The required holding period for an individual's interest in income is the time specified in Section 63-3022H(3), Idaho Code, for the property on which an Idaho capital gains deduction is being claimed. Different types of property have different time periods specified. For example, real property must be held twelve (12) months, but timber must be held twenty-four (24) months. As a result, if a partnership has gain from the sale of Idaho land, a partner must have held his interest in income for twelve (12) months. If a partnership has gain from the sale of Idaho timber, a partner must have held his interest in income for twenty-four (24) months. If a



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partnership has gain from both Idaho land and Idaho timber, a partner must meet both time requirements in order to claim the capital gains deduction on the gains from both types of property. If a partner holds his interest in income for only one (1) of the time periods required, the partner may claim the capital gains deduction only on the gain from that property. For example, if the partner held his interest in income for only eighteen (18) months, he would be entitled to claim a capital gains deduction only on the gain from the sale of the Idaho land, not on the gain from the sale of the Idaho timber. ( )

**d.** Tacked-on holding periods included in the holding period of an individual's partnership interest or an individual's S corporation stock, shall not apply in determining whether an interest in income has been held for the required time. ( )

**03. Gross Income Limitations.** To qualify for the Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one-half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. ( )

**034. Multistate Entities.** A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

**045. Examples.** (3-20-97)

**a.** XYZ Farms, a multistate partnership, sold ~~a three (3) parcels of farmland: one (1) in Idaho farmland~~ purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar (\$40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar (\$30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar (\$20,000) loss, for a net gain of fifty thousand dollars (\$50,000). ~~The sixty thousand dollar (\$60,000) gain~~ The income and loss from the sale of the farmland is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of ~~nine six~~ thousand dollars (\$96,000), computed as follows: (\$640,000 Idaho gain X 75% apportionment factor = \$4530,000 gain apportioned to Idaho X 1/3 interest = \$150,000 attributable to each partner X 60% = \$96,000 capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or ~~twelve eight~~ thousand dollars (\$128,000). After 2001, the capital gains deduction returns to sixty percent (60%) or ~~nine six~~ thousand dollars (\$96,000). (5-3-03)( )

**b.** ~~XYZ Farms, a multistate partnership, sold a parcel of Idaho real estate held for investment for the past seven (7) years. The sixty thousand dollar (\$60,000) gain is determined to be nonbusiness income and is allocated to Idaho. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of twelve~~

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~~thousand dollars (\$12,000), computed as follows: (\$60,000 gain allocated to Idaho X 1/3 = \$20,000 partner's share X 60% = \$12,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars (\$12,000). Assume the same facts as in Paragraph 173.05.a., of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return.~~ (5-3-03)( )

~~c. A resident partner's capital gain is not limited by the apportionment factor of the pass-through entity. Therefore, in both of the examples in Subsections 173.04.a. and 173.04.b., a resident partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), or sixteen thousand dollars (\$16,000) for taxable year 2001 only. Assume the same facts as in Paragraph 173.05.a., of this rule, except that the Oregon property was sold at a ninety thousand dollar (\$90,000) loss, resulting in capital gain net loss from the partnership. If a partner had other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.05.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner.~~ (5-3-03)( )

~~d. Assume the same facts as in Paragraph 173.05.a., of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar (\$40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000), computed as follows: (\$40,000 gain allocated to Idaho X 1/3 = \$13,333 partner's share X 60% = \$8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667).~~ ( )

~~e. An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.05.a., of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000) computed as follows: (\$40,000 Idaho gain X 1/3 interest X 60% = \$8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$40,000 Idaho gain X 1/3 interest X 80% = \$10,667).~~ ( )

~~f. Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction.~~ ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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### 255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).

Section 63-3026A(4), Idaho Code.

~~(3-20-97)~~(\_\_\_\_)

**01. In General.** The exemptions and deductions allowable for federal purposes, except for the deduction of state income taxes, are allowed in part in computing Idaho taxable income. (3-20-97)

**02. Proration Percentage.** To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, multiply the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(j), Idaho Code, by the proration percentage. The proration percentage is calculated by dividing Idaho adjusted income by total adjusted income. For taxable years beginning in or after 2007, the percentage shall be ~~rounded to the nearest whole percent~~ calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ( $\$10,000 / \$15,000 = 66.666\% = .6667$ ). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ( $\$10,000 / \$30,000 = 33.333\% = .3333$ ). The percentage may not exceed one hundred percent (100%), nor be less than zero (0).

~~(3-30-01)~~(\_\_\_\_)

**a.** Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(h), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. (3-30-01)

**b.** Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage shall be between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage shall be zero (0). (3-20-97)

**03. Standard Deduction for Married Filing Joint Returns.** The proration percentage shall be applied after making the following calculations: (3-30-01)

**a.** For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)

**b.** For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

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## (BREAK IN CONTINUITY OF SECTIONS)

### 280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).

Sections 63-3027 and 63-3030(a)(9), Idaho Code.

~~(3-15-02)~~( )

**01. In General.** A partnership that operates within and without Idaho shall apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations.

(4-5-00)

**02. Exceptions to Apportionment Formula.** If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax Commission may require, an alternative method, including the following:

~~(4-5-00)~~( )

**a.** Separate accounting as provided in Rule 585 of these rules; ~~or~~ ~~(4-5-00)~~( )

**b.** The exclusion of a factor pursuant to Rule 590 of these rules; ( )

**~~b~~c.** An additional factor or substitute factor pursuant to Rule 595 of these rules; or  
~~(4-5-00)~~( )

**d.** The employment of any other method that would fairly represent the extent of business activity in Idaho. ( )

**03. Information Provided to Partners.** The partnership shall provide to each partner information necessary for the partner to compute his Idaho income tax. Such information shall include:

(4-5-00)

**a.** The apportioned share of each pass-through item of income and deduction; (4-5-00)

**b.** The apportioned share of each Idaho addition and subtraction; (4-5-00)

**c.** Idaho tax credits and tax credit recapture; (4-5-00)

**d.** Income allocated to Idaho; (3-15-02)

**e.** The partnership's property, payroll and sales factor numerators and denominators if the partner is not an individual; and (3-15-02)

**f.** The distributive share of partnership gross income multiplied by the Idaho apportionment factor, if the partner is an individual, trust or estate. (3-15-02)

281. -- 289. (RESERVED).

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### 290. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES -- ELECTION (RULE 290).

Section 63-3022L, Idaho Code.

~~(3-30-01)~~(\_\_\_\_)

#### 01. Election Provided in Section 63-3022L, Idaho Code. (3-30-01)

a. The election to have the entity pay the tax as provided in Section 63-3022L, Idaho Code, is available only to an individual who is an officer, director, shareholder, partner, member, or beneficiary. If the individual has Idaho taxable income in addition to income described in Section 63-3022L, Idaho Code, the election is not available. (3-30-01)

b. The election is not available to corporations, partnerships or electing small business trusts, or to any other person who is not an individual. (3-30-01)

c. Permission from the Tax Commission to make the election is not required. (3-30-01)

d. The election is made by the individual. No statement or form is required. If the election is made, the entity shall report and pay the tax on the individual's Idaho taxable income ~~of the individual, as described in Subsection 290.02, on the entity's Idaho return.~~ The individual's Idaho taxable income is described in Rule 291 of these rules. ~~(3-30-01)~~(\_\_\_\_)

~~e02.~~ **Failure to Make Election.** If the individual fails to make the election to have the entity pay the tax, and does not report and pay the tax on the income described in ~~Subsection 290.02,~~ Rule 291 of these rules on an Idaho individual income tax return when such return is required, the entity shall be required to pay the tax on such income. ~~(3-30-01)~~(\_\_\_\_)

~~02.~~ **Income Reportable to Idaho.** (3-30-01)

~~a.~~ **Compensation reportable to Idaho.** (3-30-01)

~~i.~~ **C Corporations.** ~~A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member.~~ (3-30-01)

~~ii.~~ **S Corporations.** ~~An S corporation may be required to pay the tax on the compensation reportable to Idaho that the S corporation paid to an individual who is an officer, director, or shareholder.~~ (3-30-01)

~~iii.~~ **Partnerships.** ~~A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member.~~ (3-30-01)

~~iv.~~ **Estates and trusts.** ~~An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary.~~ (3-30-01)

~~v.~~ **Compensation reportable to Idaho for an Idaho part-year resident or nonresident**

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~~is determined pursuant to Rule 270 of these rules. (3-30-01)~~

~~**b.** Pass-through items reportable to Idaho. (3-30-01)~~

~~i. S Corporations. An S corporation may be required to pay the tax on the pass-through items reportable to Idaho by an individual shareholder. (3-30-01)~~

~~ii. Partnerships. A partnership may be required to pay the tax on the pass-through items reportable to Idaho by an individual who is a partner or member. (3-30-01)~~

~~iii. Pass-through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. (3-30-01)~~

~~**c.** Distributable net income reportable to Idaho. (3-30-01)~~

~~i. Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. (3-30-01)~~

~~ii. Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. (3-30-01)~~

~~**03. Capital Loss.** As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-01)~~

~~**04. Net Operating Loss.** As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-01)~~

## **291. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES -- TAXABLE INCOME (RULE 291).**

Section 63-3022L, Idaho Code. ( )

### **01. Compensation Reportable to Idaho. ( )**

**a.** C Corporations. A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member. ( )

**b.** S Corporations. An S corporation may be required to pay the tax on the compensation reportable to Idaho that the S corporation paid to an individual who is an officer, director, or shareholder. ( )

**c.** Partnerships. A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member. ( )

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**d.** Estates and trusts. An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary. ( )

**e.** Compensation reportable to Idaho for an Idaho part-year resident or nonresident is determined pursuant to Rule 270 of these rules. ( )

### **02. Pass-Through Items Reportable to Idaho.** ( )

**a.** S Corporations. An S corporation may be required to pay the tax on the pass-through items reportable to Idaho by an individual shareholder. ( )

**b.** Partnerships. A partnership may be required to pay the tax on the pass-through items reportable to Idaho by an individual who is a partner or member. ( )

**c.** Pass-through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. ( )

### **03. Distributable Net Income Reportable to Idaho.** ( )

**a.** Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. ( )

**b.** Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. ( )

**04. Deductions That Are Subject to Limitations or Elections by Individuals.** A pass-through entity is not allowed to deduct items that are subject to limitations or elections at the individual level. Examples of such items include the Section 179 deduction, research and experimental expenses, mining exploration and development costs, pre-productive period expenses, and passive activity losses. Individuals may not bypass limitations on deductions by electing to have the pass-through entity pay the tax. ( )

### **05. Deductions That Are Not Allowed to S Corporations and Partnerships.** ( )

**a.** Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. ( )

**b.** Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. ( )

**c.** Nonbusiness Deductions. Deductions are not allowed for nonbusiness expenses of an individual, such as those claimed as itemized deductions, charitable contributions, or personal exemptions. ( )

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~~2942.~~ -- 299. (RESERVED).

**300. TAX ON CORPORATIONS (RULE 300).**

Sections 63-3025 and 63-3025A, Idaho Code.

(3-20-97)

**01. Excise Tax.** A corporation excluded from the tax on corporate income imposed by Section 63-3025, Idaho Code, is subject to the excise tax imposed by Section 63-3025A, Idaho Code. If a corporation is subject to the excise tax imposed by Section 63-3025A, Idaho Code, it is not subject to the tax on corporate income imposed by Section 63-3025, Idaho Code. (3-20-97)

**02. Minimum Tax.** A name-holder or inactive corporation that is authorized to do business in Idaho shall pay the minimum tax of twenty dollars (\$20) even though the corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 300.03. (3-20-97)

**03. Nonproductive Mining Corporations.** A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. A corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (3-20-97)

**04. Protection Under Public Law 86-272.** A corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. ( )

## (BREAK IN CONTINUITY OF SECTIONS)

**700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- IN GENERAL (RULE 700).**

Section 63-3029, Idaho Code.

(~~7-1-98~~)( )

**01. Taxpayers Entitled to the Credit.** The credit for taxes paid to another state shall be allowed only to qualifying individuals who are domiciled in Idaho at the time the income was earned in another state. An individual who is not domiciled in Idaho but who qualifies as a resident in accordance with Section 63-3013(b), Idaho Code, does not qualify for this credit. ( )

**02. Taxes Eligible for the Credit.** The credit for taxes paid to another state is allowed for the amount of income tax imposed by another state on a qualifying individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member or beneficiary. For taxes paid by a pass-through entity, the credit is allowed to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state. ( )

**043. Taxes Not Eligible for the Credit.** Any tax or portion thereof imposed on capital stock, retained earnings, stock values, or a basis other than income is not eligible for the credit.



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**024. Credit Calculated on a State-by-State Basis.** The credit and credit limitations shall be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. (7-1-98)

**035. Income Tax Payable to Another State.** The income tax payable to another state shall be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. (~~7-1-98~~)( )

**06. Limitations.** The credit for taxes paid to another state shall be limited as follows: ( )

**a.** The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, or trust. ( )

**b.** If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit shall reduce the income tax paid by the pass-through entity. For example, an individual domiciled in Idaho is required to pay tax in another state due to his interest in an S corporation operating in that state. In addition to the individual's tax paid to the other state, the S corporation is required to pay an income tax to that state, of which four hundred dollars (\$400) is attributable to the Idaho resident. The individual's income tax to the other state totals three hundred dollars (\$300), but he is entitled to a three-hundred sixty dollar (\$360) refundable corporate tax credit due to his share of the tax paid by the pass-through entity, resulting in a net refund of sixty dollars (\$60). In computing the tax actually paid to the other state, the tax paid by the pass-through entity must be reduced by the net refund received by the individual ( $\$400 - \$60 = \$340$ ). The credit for tax paid to the other state is limited to three hundred forty dollars (\$340). ( )

**c.** The credit may not exceed the proportion of the tax otherwise due to Idaho that the amount of the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. For example, if the adjusted gross income derived in another state is twelve thousand dollars (\$12,000) after taking into account the Idaho additions and subtractions required by the Idaho Income Tax Act, and the individual's total adjusted gross income similarly modified equals fifty thousand dollars (\$50,000), the credit cannot exceed twenty-four percent (24%) of the tax paid to Idaho ( $\$12,000/\$50,000 = 24\% \times \text{tax paid to Idaho}$ ). ( )

**047. Rounding to the Nearest Whole Percent.** For taxable years beginning in or after 2007, the percentage calculated under Section 63-3029, Idaho Code, shall be ~~rounded to the nearest whole percent~~ calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ( $\$10,000/\$15,000 = 66.666\% = .6667$ ). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ( $\$10,000/\$30,000 = 33.333\% = .3333$ ). This percentage may not exceed one hundred percent (100%) nor be less than zero (0). ~~For example,~~

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~~sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%). (3-30-01)( )~~

### **701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- PART-YEAR RESIDENTS (RULE 701).**

Section 63-3029, Idaho Code. ( )

**01. Income Subject to Tax by Both States.** For purposes of the credit for income taxes paid to another state, income subject to tax by both states shall mean the total amount of income a taxpayer receives from sources outside of Idaho during the portion of the year he is domiciled in Idaho. Both the source state and Idaho must impose an income tax on this income. Income received during the portion of the year the taxpayer was not domiciled in Idaho does not qualify. ( )

**02. Examples.** The following examples assume the taxpayer earned only wage income. ( )

**a.** Taxpayer A was domiciled in California and worked in that state from January through June. In July he moved to Idaho and changed his domicile from California to Idaho. He worked in Idaho the rest of the year. California will tax only the wages earned in California and Idaho will tax only the wages earned in Idaho. Because no income is subject to tax by both states, no credit for income taxes paid another state is allowed. ( )

**b.** Taxpayer B was domiciled in Oregon from January through June. On July 1 he moved to Idaho and changed his domicile from Oregon to Idaho. He resided in Idaho the rest of the year. He worked in Oregon for the same employer the entire year. Oregon will tax all the wages earned during the year since they were earned in Oregon. Idaho will tax only the wages he earned in Oregon while residing in Idaho. As a result, only one-half (6 months / 12 months = 1/2) of his wages qualify for credit purposes as being subject to tax by both Idaho and Oregon. ( )

**c.** Taxpayer C was domiciled in California. He resided and worked in California from January through June. On July 1 he moved to Idaho, but did not change his domicile to Idaho as he intended to return to his home in California once his job assignment in Idaho was completed. California will tax all his wages earned during the year since he is domiciled in California. Idaho will tax only the wages he earned in Idaho while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California because he is not domiciled in Idaho. ( )

**704.2. -- 704. (RESERVED).**

### **745. CREDIT FOR QUALIFYING NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (RULE 745).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001. (5-3-03)

**01. In General.** A revenue-producing enterprise means an Idaho business that begins with a natural resource and produces, assembles, fabricates, manufactures, or processes a value-

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added product. A revenue-producing enterprise includes a business that conducts or is engaged in the following: (3-30-01)

- a. Farming activities identified in Section 464, Internal Revenue Code, that result in a value-added product; (3-30-01)
- b. Mining; (3-30-01)
- c. Logging; (3-30-01)
- d. Extracting a natural resource. (3-30-01)

**02. Nonqualifying Activities.** Examples of businesses that do not qualify as a revenue-producing enterprise include a business performing the following activities: (3-30-01)

- a. Retail sales; (3-30-01)
- b. Professional or managerial services; (3-30-01)
- c. Repair services or other service related activities; (3-30-01)
- d. The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing; (3-30-01)
- e. The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining, or manufacturing; (3-30-01)
- f. Transportation activities, unless they are an integral part of a qualifying activity; (3-30-01)
- g. Activities that consume a natural resource in a process, but do not add value to the natural resource. (3-30-01)

**03. Examples.** (3-30-01)

a. A taxpayer's Idaho business included buying wool in raw form, processing the wool into yarn, and using the yarn to manufacture articles of clothing. The taxpayer's business activity qualifies as a revenue-producing enterprise. (3-30-01)

b. A taxpayer's Idaho business includes buying the yarn to manufacture articles of clothing. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)

c. A taxpayer's Idaho business includes cutting lumber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The taxpayer's cutting, transporting and processing activities qualify as a revenue-producing enterprise. The selling activity does not qualify. (3-30-01)

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d. A taxpayer's Idaho business includes buying plywood to manufacture furniture. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)

e. A taxpayer's Idaho business includes training horses. Because the Idaho business does not result in a value-added product, but rather provides a service, the taxpayer's business activity does not qualify as a revenue-producing enterprise. (3-30-01)

f. A taxpayer's Idaho business includes using water in a process to produce electricity. Because the Idaho business does not begin with a natural resource that is made into a value-added product, but rather uses the natural resource in a process, the taxpayer's Idaho business activity does not qualify as a revenue-producing enterprise. (3-30-01)

g. A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. (3-30-01)

### 04. Multiple Activities. (3-30-01)

~~a. If a taxpayer is engaged in both a revenue-producing enterprise and other activities, and at least fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer may treat the entire Idaho business as a revenue-producing enterprise. (3-30-01)~~

~~b. If a taxpayer's is engaged in trade or business includes both a revenue-producing enterprise and other activities, and less than fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer must calculate qualifying new employees and the net income limitation based on that portion of the Idaho business that qualifies as a revenue-producing enterprise. (3-30-01)(\_\_\_\_)~~

05. **Seasonal or New Business.** An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-30-01)

06. **Unitary Taxpayers.** The activities of a taxpayer that qualify as a revenue-producing enterprise shall be determined separately for each corporation that is a member of the unitary group. (3-30-01)

### (BREAK IN CONTINUITY OF SECTIONS)

## 747. CREDIT FOR QUALIFYING NEW EMPLOYEES -- NET INCOME OF A ~~REVENUE PRODUCING ENTERPRISE~~ TRADE OR BUSINESS (RULE 747).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning ~~in 2000~~ on and after January 1, 2007. (5-3-03)(\_\_\_\_)

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**01. ~~Entire Idaho Business Qualifies as a Revenue-Producing Enterprise~~ Net Income From the Taxpayer's Trade or Business.** ~~If the entire Idaho business qualifies as a revenue-producing enterprise or the taxpayer treats the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, a taxpayer is claiming the credit under Section 63-3029F, Idaho Code, the net income of the taxpayer's trade or business shall be calculated as follows:~~ (3-30-01)(\_\_\_\_)

**a.** Proprietorships. The amount of income from Idaho activities that is reported as net profit or net loss on Schedule C or Schedule F. (3-30-01)

**b.** C Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

**c.** S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified ~~to restore~~ as follows: the deduction ~~of for~~ income reported by shareholders on their Idaho income tax returns ~~and before~~ shall be added back, the addition ~~of for~~ compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-01)(\_\_\_\_)

**d.** Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified ~~to restore~~ as follows: the deduction ~~of for~~ income reported by partners on their Idaho income tax returns ~~and before~~ shall be added back, the addition ~~of for~~ compensation or income attributable to individual partners who do not report this income on Idaho income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-01)(\_\_\_\_)

**02. ~~Idaho Business with Multiple Activities.~~** (3-30-01)

**a.** ~~If the Idaho business has multiple activities resulting in only a portion of the business qualifying as a revenue-producing enterprise, and the taxpayer does not treat the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, the net income shall be calculated for the portion of the Idaho business that qualifies as a revenue-producing enterprise based on the number of employees in the revenue-producing enterprise compared to the number of employees in the entire business. The number of employees in the revenue-producing enterprise shall be calculated in accordance with Subsection 746.02 of these rules.~~ (3-30-01)

**b.** ~~If the calculation of net income in Subsection 747.02.a. does not fairly represent the net income of the revenue-producing enterprise, the taxpayer may propose or the Tax Commission may require an alternative method.~~ (3-30-01)

**032. Unitary Taxpayers.** Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

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## (BREAK IN CONTINUITY OF SECTIONS)

771. -- ~~774~~. (RESERVED).

### **775. CREDIT FOR LIVE ORGAN DONATION EXPENSES (RULE 775).**

Section 63-3029K, Idaho Code. ( )

**01. Credit Allowed.** The credit for live organ donation expenses allowed by Section 63-3029K, Idaho Code, applies to live organ donation expenses incurred by a taxpayer during taxable years beginning on or after January 1, 2007. ( )

**02. Limitations.** The credit allowed to an individual for the taxable year in which the live organ donation occurs is limited to the lesser of: ( )

**a.** The amount of live organ donation expenses paid by the taxpayer during the taxable year, or ( )

**b.** Five thousand dollars (\$5,000). ( )

**03. Live Organ Donation.** A live organ donation means a donation by a living individual who donates the following for transplanting in another individual: ( )

**a.** Human bone marrow, or ( )

**b.** Any part of an organ including the following: ( )

**i.** Intestine, ( )

**ii.** Kidney, ( )

**iii.** Liver, ( )

**iv.** Lung, or ( )

**v.** Pancreas. ( )

**04. Live Organ Donation Expenses.** Qualifying expenses shall be directly related to a live organ donation by the taxpayer or by a dependent of the taxpayer and shall include the following: ( )

**a.** The unreimbursed cost of travel paid by the taxpayer to and from the place where the donation operation occurred. ( )

**b.** Unreimbursed lodging expenses paid by the taxpayer. ( )

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c. Wages or other compensation lost because of the taxpayer's absence from work during the donation procedure and convalescence. ( )

05. **Carryover.** The carryover period for the credit for live organ donation expenses is five (5) years. ( )

**776. -- 784. (RESERVED).**

## **(BREAK IN CONTINUITY OF SECTIONS)**

### **799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799).**

Section 63-3029P, Idaho Code. (5-3-03)

**01. Tax Liability.** Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

**02. Nonrefundable Credits.** A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

**a.** Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

**b.** For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; (5-3-03)

**c.** Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)

**d.** Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)

**e.** Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)

**f.** Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)

**g.** Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)

**h.** Credit for qualifying new employees as authorized by Sections 63-3029E and 63-3029F, Idaho Code; (3-15-02)

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- i.** Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)
- j.** Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)
- k.** Incentive investment tax credit as authorized by Section 63-3029J, Idaho Code. (3-15-02)
- l.** Corporate headquarters investment tax credit as authorized by Section 63-2903, Idaho Code. (4-11-06)
- m.** Corporate headquarters real property improvement tax credit as authorized by Section 63-2904, Idaho Code. (4-11-06)
- n.** Corporate headquarters new jobs tax credit as authorized by Section 63-2905, Idaho Code. (4-11-06)
- o.** Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. (4-11-06)
- p.** Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. (4-11-06)
- q.** Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. (4-11-06)
- r.** Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. ( )
- 03. Adjustments to Credits.** (4-11-06)
- a.** Adjustments to the amount of a credit earned shall be determined pursuant to the law applicable to the taxable year in which the credit was earned. (4-11-06)
- b.** Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit shall also apply to any taxable years to which the credit was carried over. (4-11-06)
- c.** If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned shall not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. (4-11-06)



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## **(BREAK IN CONTINUITY OF SECTIONS)**

### **801. PERSONS REQUIRED TO FILE INCOME TAX RETURNS (RULE 801).**

Section 63-3030, Idaho Code.

( )

01. In General. Persons who meet the filing requirements under Section 63-3030, Idaho Code, shall file Idaho income tax returns unless otherwise provided in the Idaho Income Tax Act or by federal law.

( )

02. Individuals Who Make Elections Under Section 63-3022L, Idaho Code. If an individual partner, member, shareholder, or beneficiary is qualified and makes an election under Section 63-3022L, Idaho Code, for the entity to pay the tax attributable to his income from the entity, such individual shall not be required to file an Idaho individual income tax return for that taxable year.

( )

03. Corporations Included in a Unitary Group. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. See Rule 365 of these rules.

( )

04. Taxpayers Protected Under Public Law 86-272. A taxpayer whose Idaho business activities fall under the protection of Public Law 86-272 is not required to file an Idaho income tax return since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act. If a taxpayer is a member of a unitary group, it shall be included in the combined report although it is exempt from the income tax. The taxpayer's property, payroll, and sales shall be included in the computation of the group factor denominators and its business income shall be included in the computation of apportionable income for the unitary group.

( )

~~801.~~ **802. (RESERVED).**

## **(BREAK IN CONTINUITY OF SECTIONS)**

### **830. INFORMATION RETURNS (RULE 830).**

Section 63-3037, Idaho Code.

(3-20-97)

**01. In General.** Information returns are not required to be filed with the Tax Commission except as follows:

(3-20-97)

**a.** Form 1098, Mortgage Interest Statement, if the property was located in Idaho.

(4-5-00)

**b.** Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho.

(4-5-00)

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- c. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)
- d. Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)
- e. Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)
- f. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)
- g. Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)
- h. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

**02. Submitting Returns.** Information returns shall be submitted to the Tax Commission through magnetic media, electronic filing, or on federal Form 1099~~or magnetic media~~. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. ~~(3-20-97)~~(\_\_\_\_)

**03. Due Date of Information Returns.** Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. (3-20-97)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **855. PERMANENT BUILDING FUND TAX (RULE 855).**

Sections 63-3082 through 63-3087, Idaho Code. (3-20-97)

**01. In General.** The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

**02. Pass-Through Entities.** The permanent building fund tax does not apply to partnerships, estates, trusts or S corporations if all the income of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. If an election is made under Section 63-3022L, Idaho Code, the entity shall pay the tax for each individual partner, member, shareholder, or beneficiary making the election. (3-30-01)

**03. Corporations Included in a Group Return.** The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact

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business in Idaho, or having income attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. ~~(3-20-97)~~( )

**04. Inactive or Nameholder Corporations.** An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax shall pay the permanent building fund tax. (3-20-97)

**05. Taxpayers Protected Under Public Law 86-272.** The permanent building fund tax shall not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

## 870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).

Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

**01. Idaho Withholding Account Number Required.** An Idaho withholding account number is required of: (3-20-97)

**a.** Each employer who pays salaries, wages, or other compensation to an employee for services performed in Idaho, including agricultural, household, and domestic employers; and (3-20-97)

**b.** Each person who withholds Idaho income tax, ~~whether required or voluntary.~~ ~~(3-20-97)~~( )

**02. Idaho Withholding Account Numbers Are Not Transferable.** If a business is sold, the new employer shall apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity shall apply for a new withholding account number. Neither entity should report wages paid by the other entity, nor use the other entity's withholding account number. (3-20-97)

### (BREAK IN CONTINUITY OF SECTIONS)

## 872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).

Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

**01. Payment of State Income Tax Withheld.** (4-6-05)

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a. In General. An employer shall remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than fifty dollars (\$50) monthly or six hundred dollars (\$600) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year.  
(4-6-05)( )

b. Split-Monthly Filers. (4-6-05)

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period. (4-6-05)

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(4-6-05)

~~iii. Filing status changes will occur only in January.~~ (4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of January. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (4-11-06)

**02. Filing of Annual Reconciliation Returns.** (4-6-05)

a. In General. Beginning January 1, 2004, an employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return shall: (4-6-05)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with

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the tax remitted for the preceding calendar year. (4-6-05)

**b.** Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of January. The Tax Commission may require a shorter filing period and due date. (4-6-05)

**c.** Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date. (4-6-05)

**03. Extension of Time to Pay or File Returns.** The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

**a.** The employer shall file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-6-05)

**b.** The employer shall file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request shall be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (4-6-05)

**04. Valid Returns.** All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

### **(BREAK IN CONTINUITY OF SECTIONS)**

## **874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).**

Sections 63-3035 and 63-3036, Idaho Code. (4-6-05)

**01. Form and Information Required.** Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (4-6-05)

**02. Furnishing Forms W-2 to Employees.** The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-6-05)

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**03. Filing Forms W-2 With the Tax Commission.** ( )

**a.** On or before the last day of February, each employer shall file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. ~~(4-6-05)~~( )

**b.** W-2s filed electronically shall be filed with the Tax Commission on or before March 31. ( )

**04. Corrected Forms W-2.** If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. (4-6-05)

**05. Employers With Fifty or More Idaho Employees.** Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner or through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine-readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. ~~(4-6-05)~~( )

**06. Services Performed Within and Without Idaho.** If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on workdays, hours, mileage or commissions. (4-6-05)

**07. Extension of Time to File Form W-2.** The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

**a.** The employer shall file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

**b.** The employer shall file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- DEFINITIONS (RULE 940).**

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 946 of these rules,

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the following definitions apply: ( )

**01. Buildings and Structural Components.** Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ( )

**02. New Plant and Building Facilities.** New plant and building facilities are facilities where employees are physically employed. ( )

**03. Investment in New Plant.** Investment in new plant shall mean new plant and building facilities: ( )

**a.** That are constructed or erected by the taxpayer, or ( )

**b.** That are acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. ( )

**c.** That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ( )

**04. Making Capital Investments.** The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ( )

**05. New Employee.** A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ( )

**06. Project Period.** The project period is a period of time that begins and ends as follows: ( )

**a.** The project period may not begin prior to January 1, 2006. It shall begin the earlier of: ( )

**i.** The date of a physical change to the project site, or ( )

**ii.** The date new employees begin providing personal services at the project site. ( )

**b.** The project period shall end at the earlier of: ( )

**i.** The conclusion of the project or, ( )

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ii. December 31, 2010. ( )

**07. Project Site.** The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) contiguous site. ( )

**08. Small Employer Investment Tax Credit.** Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. ( )

**09. Small Employer New Jobs Tax Credit.** Small employer new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. ( )

**10. Small Employer Real Property Improvement Tax Credit.** Small employer real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-4404, Idaho Code. ( )

**11. Small Employer Tax Incentive Criteria.** Small employer tax incentive criteria shall mean the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 942 of these rules for more information. ( )

**12. Small Employer Tax Incentives.** Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. ( )

**941. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- IN GENERAL (RULE 941).**  
Sections 63-4401 and 63-4406, Idaho Code. ( )

**01. Coordination with Idaho Corporate Headquarters Incentive Act of 2005.** The tax incentives provided by the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code. ( )

**02. Pass-Through Entities.** The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. ( )

**03. Reorganizations, Mergers and Liquidations.** The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including a mere change in the form of conducting the trade or business and transactions to which Section 381(a), Internal Revenue Code, applies shall not cause recapture to occur so long as the property is retained in such trade or business as qualified investment in new plant and the taxpayer retains a substantial interest in such trade or business. To the extent that provisions of the



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Internal Revenue Code allow an acquiring taxpayer to succeed to and take into account unused investment credits of the distributor or transferor taxpayer, such provisions shall apply to the acquiring taxpayer with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 946 of these rules for information related to the recapture required by an acquiring taxpayer. ( )

**04. Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. ( )

**05. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ( )

**942. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 942).**  
Section 63-4402, Idaho Code. ( )

**01. In General.** The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period: ( )

**a.** Making capital investment in new plant and building facilities totaling five hundred thousand dollars (\$500,000) or more; ( )

**b.** Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code; ( )

**c.** Employment increases more than the ten (10) new employees described in Paragraph 942.01.b. of this rule shall meet the requirements of Section 63-4402(2)(j)(ii)(2), Idaho Code; and ( )

**d.** Once the increase in employment has been reached, maintaining that increased employment in Idaho for the remainder of the project period. ( )

**02. Certification.** A taxpayer shall certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives: ( )

**a.** A description of the qualifying project; ( )

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- b.**     The estimated or actual start date of the project; ( )
- c.**     The estimated or actual end date of the project; ( )
- d.**     The location of the project site or sites; ( )
- e.**     The estimated or actual number of new jobs created during the project period; and ( )
- f.**     The estimated or actual cost of capital investment in new plant and building facilities for each year in the project period. ( )

**03.     Copy of Certification Form Required.** A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over. ( )

**943.    IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 943).**  
Sections 63-4403 and 63-4406, Idaho Code. ( )

**01.     Credit Allowed.** ( )

**a.**     The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2010. ( )

**b.**     The credit applies to qualified investments placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the qualified investments placed in service during that taxable year shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. ( )

**02.     Taxpayers Entitled to the Credit.** The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ( )

**03.     Qualified Investments.** ( )

**a.**     Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-4403, Idaho Code, and related rules to qualify as qualified investments. ( )

**b.**     Qualified investments must be placed in service in Idaho, but may be located in or outside the project site to qualify. ( )

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**04. Limitations.** The small employer investment tax credit allowable in any taxable year shall be limited as follows: ( )

**a.** The small employer investment tax credit claimed during a taxable year may not exceed the lesser of: ( )

i. Seven hundred fifty thousand dollars (\$750,000); or ( )

ii. Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ( )

**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ( )

**05. Carryovers.** The carryover period for the small employer investment tax credit is fourteen (14) years. ( )

**06. Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investments in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. ( )

**944. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 944).**

Sections 63-4404 and 63-4406, Idaho Code. ( )

**01. Credit Allowed.** ( )

**a.** The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2010. ( )

**b.** The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit. ( )

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**02. Taxpayers Entitled to the Credit.** The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ( )

**03. Buildings and Structural Components of Buildings.** ( )

**a.** To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: ( )

**i.** The buildings and structural components of buildings must be new as defined in Subsection 940.03 of these rules. Structural components placed in service as part of a renovation of an existing building do not qualify. ( )

**ii.** The buildings and structural components of buildings must be placed in service at the project site. ( )

**b.** Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the small employer real property improvement tax credit. ( )

**04. Limitations.** The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows: ( )

**a.** The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of: ( )

**i.** One hundred twenty-five thousand dollars (\$125,000); or ( )

**ii.** One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ( )

**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ( )

**05. Carryovers.** The carryover period for the small employer real property improvement tax credit is fourteen (14) years. ( )

**945. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 945).** Sections 63-4405 and 63-4406, Idaho Code. ( )

**01. Credit Allowed.** ( )

**a.** The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code,

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may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2010. ( )

**b.** The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, new employees hired during that taxable year shall not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. ( )

**c.** The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. ( )

**02. Taxpayers Entitled to the Credit.** The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ( )

**03. Calculating Number of Employees.** ( )

**a.** Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(e) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: ( )

i. The employee must have worked primarily within the project site for the taxpayer. ( )

ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. ( )

iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. ( )

iv. The employee must have been subject to Idaho income tax withholding. ( )

v. The employee must have been covered for Idaho unemployment insurance purposes. ( )

vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. ( )

vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ( )

**b.** Idaho Department of Commerce and Labor Reports. The taxpayer should begin

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with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ( )

**c.** Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ( )

### **04. Calculating the Number of New Employees.** ( )

**a.** The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ( )

i. The number of employees for the prior taxable year; or ( )

ii. The average of the number of employees for the three (3) prior taxable years ( )

**b.** The requirements as to who qualifies for the calculation of number of employees in Paragraph 945.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 945.04.a.i., and 945.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. ( )

**c.** The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ( )

**05. Computing the Credit Earned.** The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. ( )

**a.** If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). ( )

**b.** If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). ( )

**c.** If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). ( )

**d.** If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). ( )

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

IDAHO STATE TAX COMMISSION  
Idaho Income Tax Administrative Rules

Docket No. 35-0101-0601  
PENDING RULE

**06. Limitations.** The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: ( )

**a.** The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ( )

**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ( )

**07. Carryovers.** The carryover period for the small employer new jobs tax credit is ten (10) years. ( )

**08. Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. ( )

**946. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- RECAPTURE (RULE 946).**  
Section 63-4407, Idaho Code. ( )

**01. Failure to Meet Tax Incentive Criteria.** If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. ( )

**02. Year Deficiency Occurs.** Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below the level of new employees required by Section 63-4402(2)(j), Idaho Code. ( )

**03. Early Disposition of Investment in New Plant.** ( )

**a.** If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount shall be computed by multiplying the credit earned by the applicable recapture percentage. ( )

**b.** The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: ( )

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## IDAHO STATE TAX COMMISSION Idaho Income Tax Administrative Rules

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PENDING RULE

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i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; ( )

ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; ( )

iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; ( )

iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; ( )

v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. ( )

### **04. Failure to Maintain Increased Employment.** ( )

a. If the required increased level of employment is not maintained for the entire recapture period, the recapture amount shall be computed by multiplying the credit earned by the applicable recapture percentage. ( )

b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: ( )

i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; ( )

ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; ( )

iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used; ( )

iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; ( )

v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. ( )

c. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. ( )

### **05. Reorganizations, Mergers and Liquidations.** ( )

a. If the investment in new plant is disposed of or otherwise ceases to qualify before the close of the recapture period while in the hands of an acquiring taxpayer who succeeded to



# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**IDAHO STATE TAX COMMISSION**  
**Idaho Income Tax Administrative Rules**

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unused small employer investment tax credit or small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the acquiring taxpayer shall be responsible for any recapture that would have been applicable to the transferor. ( )

**b.** For purposes of computing the recapture when an acquiring taxpayer succeeded to unused small employer investment tax credit and small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the recapture period shall begin with the date on which the property was placed in service by the transferor taxpayer and shall end with the date of the disposition by, or cessation with respect to, the acquiring taxpayer. ( )

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.01 - IDAHO INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, page 472 and 473.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Janice Boyd at (208) 334-7530.

DATED this November 2, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**October 18, 2006  
10:00 a.m.  
Idaho State Tax Commission  
First Floor, Conference Room 5**

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**IDAHO STATE TAX COMMISSION**  
**Idaho Income Tax Administrative Rules**

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**PENDING RULE**

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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 600:** Amend Income Tax Rule 600 to add to Subsection 04, Intercompany Transactions, paragraphs addressing dividends from real estate investment trusts and regulated investment companies, Internal Revenue Code Section 1248 dividends, and dividends received from stock insurance subsidiaries. Add information to Subsection 05, Insurance Companies, that clarifies insurance companies are included in the combined report, but their tax is deducted from the tax liability computed for the unitary group if paying the Idaho premium tax.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Janice Boyd (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 21st day of August, 2006.

Janice Boyd  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

IDAHO STATE TAX COMMISSION  
Idaho Income Tax Administrative Rules

Docket No. 35-0101-0602  
PENDING RULE

## 600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).

Section 63-3027(t), Idaho Code.

(3-20-97)

**01. Combined Report.** Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. (4-6-05)

**02. Domestic International Sales Corporations.** If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (7-1-98)

**03. Foreign Sales Corporations.** If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (7-1-98)

**04. Intercompany Transactions.** If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. (3-20-97)

**a.** Dividends received from a real estate investment trust or a regulated investment company and not included in the pre-apportionment tax base as a result of the federal deduction for dividends paid allowed to the dividend payor are not eliminated as intercompany transactions in computing combined income. ( )

**b.** Internal Revenue Code Section 1248 Dividends. ( )

**i.** Taxpayers Using the Worldwide Filing Method. A corporation included in a worldwide combined group shall treat Section 1248 dividends as dividends for Idaho income tax purposes. An intercompany dividend elimination is allowed to the extent dividends received are paid from current or prior year earnings previously included in income subject to apportionment. ( )

**ii.** Taxpayers Using the Water's Edge Filing Method. A corporation included in a water's edge combined group shall treat Section 1248 dividends as dividends that qualify for the dividend exclusion allowed by Section 63-3027C(c)(1), Idaho Code. ( )

**c.** Dividends received from a stock insurance subsidiary and deducted by a mutual insurance holding company or an intermediate holding company pursuant to Section 41-3821, Idaho Code, are not eliminated as intercompany transactions in computing combined income. ( )

**05. Insurance Companies.** Pursuant to Section 41-405, Idaho Code, ~~an insurance company subject to the premium tax may not be included in a combined group~~ payment of an

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**IDAHO STATE TAX COMMISSION**  
**Idaho Income Tax Administrative Rules**

**Docket No. 35-0101-0602**  
**PENDING RULE**

Idaho tax upon an insurance company's premiums shall be in lieu of an income tax.

~~(3-20-97)~~(\_\_\_\_)

**a.** If an insurance company is a member of a unitary business and pays the Idaho premium tax, the insurance company shall be included in the combined group and its income and factor attributes included in the combined report. The income tax attributable to the insurance company shall be deducted from the total tax computed in the combined report. Income tax credits that the insurance company may have earned may not be shared with other members of the unitary group. (\_\_\_\_)

**b.** If an insurance company is a member of a unitary business and pays a premium tax to a state other than Idaho, or does not pay a premium tax to any state, the insurance company shall be included in the combined group and its income and factor attributes included in the combined report. The insurance company shall be liable for the Idaho income tax computed on its activity in Idaho and is not exempt from the income tax as a result of Section 41-405, Idaho Code. (\_\_\_\_)

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.02 - SALES TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0102-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635 and 63-3039 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 474 through 487.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jim Husted (208) 334-7500.

DATED this 30th day of October, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635, and 63-3039.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

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**STATE TAX COMMISSION**  
**Sales Tax Administrative Rules****Docket No. 35-0102-0601**  
**PENDING RULE**

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must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Sales Tax Rules 001, 004, 005, and 006 are not in the format recommended by the Department of Administration's Office of Administrative Rules:

**Rule 001:** Needs to be divided into 2 paragraphs.

**Rule 004:** Currently is the "public records act" rule, should be "incorporation by reference" rule. Amended to incorporate by reference IDAPA 35.02.01 "Administration and Enforcement Rules."

**Rule 005:** Amend Rule to update the web address and e-mail address.

**Rule 006:** Put the public records statement in a new rule.

**Rule 011:** To strike the statement that sales of intrastate charter flights are taxable. Taxation of air transportation is barred by federal law.

**Rule 019:** To amend the rule to state that sheriff's offices are assigned a seller's permit number and must file returns quarterly. This brings the rule into conformity with administrative practice.

**Rule 037:** To clarify that "transporting freight or passengers for hire" means providing transportation services to the public and not just to related parties.

**Rule 051:** Rule 051 currently states that sales of some discount memberships sold by retailers are taxable. Courts in other states have ruled that the memberships are sales of intangibles and are not taxable. Also, the rule needs to clarify the application of the tax to "buy one get one free" offers and complementary items given when another item is purchased. The rule is being amended to state that discount memberships are intangible and their sale is not taxable. Also, to that the price subject to tax in "buy one get one free" offers is the amount actually paid by the customer. The retailer does not owe use tax on the item given away. Finally, the amendment will clarify that no tax is due on complimentary items given away when a purchase of tangible personal property is required as long as the sale of the item purchased is taxable.

**Rule 101:** To delete an obsolete statement in Subsection 101.01 and correct the statements in subsections 101.03.b. and 101.06 so the rule conforms to the statute. To add a new subsection stating that the vehicles in a fleet that do not meet the 10% out of state mileage requirement of Section 63-3622R, Idaho Code, will become subject to use tax at the end of the registration period.

**Rule 107:** To add a statement clarifying that an Idaho resident who forms an LLC in another state for the primary purpose of purchasing one or more motor vehicles does not qualify for the nonresident exemption in Section 63-3621, Idaho Code, and to add a

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Sales Tax Administrative Rules**

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**PENDING RULE**

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subsection clarifying that credit will be given against any Idaho use tax due for local sales taxes paid in Alaska if the goods are then brought to Idaho.

**Rule 119: Strike the obsolete reference to Form IBR-2.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **001. TITLE AND SCOPE (RULE 001).**

**01. Title.** These rules shall be cited as IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules." (\_\_\_\_)

**02. Scope.** These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose an excise tax upon each sale at retail of the sales price of all property subject to taxation under this act and on the storage, use, or other consumption in this state of tangible personal property. (~~7-1-93~~)(\_\_\_\_)



# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**STATE TAX COMMISSION**  
**Sales Tax Administrative Rules**

**Docket No. 35-0102-0601**  
**PENDING RULE**

## **(BREAK IN CONTINUITY OF SECTIONS)**

### **004. ~~PUBLIC RECORDS~~ INCORPORATION BY REFERENCE (RULE 004).**

*The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code. These rules incorporate IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules".* (3-15-02)( )

### **005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).**

**01. Main Office.** The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The telephone number for Taxpayer Services is (208) 334-7660, or toll free at 1-800-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is [taxrep@tax.state.id.us](mailto:taxrep@tax.state.id.us) [taxrep@tax.idaho.gov](mailto:taxrep@tax.idaho.gov). The Tax Commission's web site is [www.tax.idaho.gov](http://www.tax.idaho.gov). All offices are open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (3-15-02)( )

**02. Regional Field Offices.** The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005." (3-15-02)

**03. Hearing Impaired.** Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1-800-377-3529. (3-15-02)

### **006. ~~PUBLIC RECORDS ACT COMPLIANCE~~ (RULE 006).**

*The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code.* ( )

### **006. -- 009. (RESERVED).**

## **(BREAK IN CONTINUITY OF SECTIONS)**

### **011. RETAIL SALES - SALE AT RETAIL (RULE 011).**

The Idaho Sales Tax is a tax on retail sales. Retail sales include all sales of tangible personal property except for property that will be resold, leased, or rented in the regular course of the buyer's business. (7-1-93)

**01. Retail Sales.** Retail sales also include: (7-1-93)

**a.** Sales to any person who constructs, alters, repairs or improves real property regardless of whether the person improving the property intends to resell it. See ~~ISTC~~ Rule 012 of

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION Sales Tax Administrative Rules

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PENDING RULE

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these rules.

(7-1-93)(\_\_\_\_)

b. Producing or fabricating property to the special order of the customer. See *ISTC* Rule 029 of these rules.

(7-1-93)(\_\_\_\_)

c. Furnishing, preparing or serving food, meals or drinks for compensation. See *ISTC* Rule 041 of these rules.

(7-1-93)(\_\_\_\_)

d. Admission charges. See *ISTC* Rule 030 of these rules.

(7-1-93)(\_\_\_\_)

e. Charges for the use or privilege of using tangible personal property or facilities for recreation. See *ISTC* Rules 030 and 047 of these rules.

(7-1-93)(\_\_\_\_)

f. Providing hotel, motel, tourist home and trailer court accommodations. See *ISTC* Rule 028 of these rules.

(7-1-93)(\_\_\_\_)

g. Leasing or renting tangible personal property. See *ISTC* Rule 024 of these rules.

(7-1-93)(\_\_\_\_)

h. ~~Charges for on-demand, intrastate charter flights.~~ For sales of air transportation services see *ISTC* Rule 037 of these rules.

(7-1-93)(\_\_\_\_)

**02. Retail Sales of Tangible Personal Property Together with Services.** The sales tax applies to retail sales of tangible personal property. It does not apply to the sale of services except as stated above. However, when a sale of tangible personal property includes incidental services, the tax applies to the total amount charged, including fees for any incidental services except separately stated transportation and installation fees. The fact that the charge for the tangible personal property results mainly from the labor or creativity of its maker does not turn a sale of tangible personal property into a sale of services. The cost of any product includes labor and manufacturing skill. To determine whether a transaction is a retail sale of tangible personal property or a sale of services, the following tests must be applied. (7-1-93)

a. To determine whether a transfer of tangible personal property is a taxable retail sale or is merely incidental to a service transaction, the proper test is to determine whether the transaction involves a consequential or inconsequential professional or personal service. If the service rendered is inconsequential, then the entire transaction is taxable. If a consequential service is rendered, then it must be determined whether the transfer of the tangible personal property is an inconsequential part of the transaction. If so, then none of the consideration paid is taxable. (7-1-93)

b. To determine whether a mixed transaction qualifies as a sale of services, the object of the transaction must be determined; that is, is the buyer seeking the service itself, or the property produced by the service. (7-1-93)

c. When a mixed transaction involves the transfer of tangible personal property and the performance of a service, both of which are consequential elements whose costs may be separately stated, then two (2) separate transactions exist. The one attributable to the sale of tangible personal property is subject to sales tax while the other is not. (7-1-93)

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION Sales Tax Administrative Rules

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**PENDING RULE**

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**03. Determining the Type of Sale.** To determine whether a specific sale is a sale of tangible personal property, a sale of services or a mixed transaction, all the facts surrounding the case must be studied and the tests described above must be applied. Here are some examples. (7-1-93)

**a.** Example 1: An attorney is retained by a client to prepare his will. The attorney prepares the will, sees that it is properly executed and bills the client. The physical document, the will, is then transferred from the attorney to the client. This is a sale of services because the client's object is not to obtain the will itself, but to ensure that his estate is disposed of in a certain way when he dies. Since, the transaction between the attorney and the client is not a retail sale of tangible personal property, no sales or use tax applies. However, the attorney must pay sales or use tax when he buys stationery and other equipment to prepare the will. Compare Example 5. (7-1-93)

**b.** Example 2: The attorney in Example 1 prepares a form book of wills which he intends to sell to other attorneys. The will he prepared in Example 1 is included in the form book. The sale of the form book to other attorneys is a taxable retail sale of tangible personal property. From the buyer's point of view, the object of the sale is to obtain the book, which is tangible personal property. The fact that special skill or knowledge went into the preparation of the book and is reflected in the purchase price does not make the sale of the form book a service transaction. (7-1-93)

**c.** Example 3: An architect is hired to prepare construction plans for a house. He prepares the plans and delivers them to his client. As in the example of the attorney preparing the will, this is a sale of services and the transfer of the tangible personal property, the plans, is inconsequential the transaction. No sales or use tax is due on the sale of the plans. (7-1-93)

**d.** Example 4: The architect in Example 3 is asked to provide additional copies of the same plans to his original client or to a third party. The architect copies the plans on a duplicating machine and sells them to the requesting party. This is a taxable retail sale of tangible personal property, since the buyer's object is to obtain the property, the plans. (7-1-93)

**e.** Example 5: An artist is commissioned to paint an oil portrait. When the portrait is completed, ownership is transferred to the client who pays the artist a lump-sum amount for the portrait. This is a taxable retail sale of tangible personal property because the buyer's object is to obtain the portrait. If the artist otherwise qualifies as a retailer, he is required to collect and remit sales tax on the sale of the portrait. (7-1-93)

**f.** Example 6: An automobile repair shop does repair work for a customer. To do the work, the shop must replace certain parts on the automobile. The repair shop bills its customer an amount for the repair parts and a separate amount for labor. This is a mixed transaction. As long as the sale of the tangible personal property, the parts, and the sale of services, the labor, are separately stated, sales tax is due only on the sale of the parts and not on the charge for labor. However, allocation of the total charge between parts and labor must be reasonable. If part of the charge for parts is unreasonably attributed to the cost of labor, the allocation may be adjusted by the Tax Commission. (7-1-93)

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g. Example 7: A retail clothing store provides needed alterations to items purchased by customers. Even though the sale depends on the alterations being done, the service is incidental to the sale of the property. The entire transaction is a retail sale subject to tax on the total price paid by the buyer, even if the charge for the alteration labor is separately stated.

(7-1-93)

**04. Kinds of Services Incidental to the Sale.** Two (2) kinds of services rendered incidental to a retail sale are specifically exempt from tax if the charge for the service is separately stated. They are:

(7-1-93)

a. Charges for transportation after the sale. See Section 63-3613, Idaho Code, and ~~ISTC~~ Rule 061 of these rules; and

~~(7-1-93)~~(\_\_\_\_)

b. Installation charges. See Section 63-3613, Idaho Code, and ~~ISTC~~ Rule 012 of these rules.

~~(7-1-93)~~(\_\_\_\_)

**05. Separately Stated Nontaxable Charges.** Separately stated nontaxable charges for transportation or installation may not be used to avoid tax on the actual sales price of tangible personal property. If the allocation of the total price is unreasonable, the State Tax Commission may adjust it.

(7-1-93)

**06. Tangible Personal Property Used or Consumed by a Business.** Tangible personal property used or consumed by a business in performing a nontaxable service is subject to sales or use tax. See ~~ISTC~~ Rule 072 of these rules.

~~(7-1-93)~~(\_\_\_\_)

### (BREAK IN CONTINUITY OF SECTIONS)

## 019. SALES BY COUNTY SHERIFFS (RULE 019).

**01. Sales.** Where tangible personal property is sold by a county sheriff, either as a result of a court order or pursuant to any summary notice and sale foreclosure procedure, a sales tax shall be assessed and collected by the county sheriff at the time of the sale in the same manner as required of any other seller.

(7-1-93)

**02. Requirement to Register.** There is no requirement for the various sheriff's offices to register with the Commission. Each sheriff's office in the state of Idaho is assigned a seller's permit number to be used in such cases and must file returns quarterly. ~~Although their offices are not required to file the regular sales tax report form, they shall be required to complete and file the Commission County Assessor's or Sheriff's Sales Tax Return, Form ST-852, on the twentieth (20th) day of the month following the month in which sales occur.~~ Sheriffs' offices must report all retail sales on Form ST-850.

~~(7-1-93)~~(\_\_\_\_)

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## **(BREAK IN CONTINUITY OF SECTIONS)**

### **037. AIRCRAFT AND FLYING SERVICES (RULE 037).**

**01. Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)

**a. Recreational Flight.** The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

**b. Freight.** Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

**c. Transportation of Passengers.** The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

**d. Nonresident Individual.** An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

**e. Nonresident Businesses and Other Organizations.** A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-20-04)

**f. Day.** For the purpose of this rule any part of a day is a day. (7-1-94)

**g. Transportation of freight or passengers for hire.** For the purposes of this rule, “transportation of freight or passengers for hire” means the business of transporting persons or property for compensation. Such transportation must be offered to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. ( )

**02. Sales of Aircraft.** Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

**a.** Primarily used to transport passengers or freight for hire; (2-18-02)

**b.** Primarily used for emergency transportation of sick or injured persons; or (2-18-02)

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c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

i. The aircraft is sold to a nonresident as defined in Subsection 037.01~~ed~~. or 037.01~~de~~. of this rule; and ~~(4-11-06)~~( )

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

**03. Federal Law Prohibits States From Taxing Sales of Air Transportation.** See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

**04. Rentals and Leases of Aircraft.** The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)

**05. Aerial Contracting Services.** Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

a. Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (7-1-94)

b. When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

**06. Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

**07. Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

**08. Recreational Flights.** Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)

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**09. Aircraft Held for Resale.** Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business.

(7-1-94)

**a.** Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule.

(7-1-93)

**b.** When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used.

(7-1-94)

**c.** Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules.

(2-18-02)

**10. Fuel.** The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax.

(7-1-94)

### **(BREAK IN CONTINUITY OF SECTIONS)**

## **051. DISCOUNTS, COUPONS, REBATES, AND GIFT CERTIFICATES (RULE 051).**

**01. Adjustments That Apply After Tax Calculation.** Tax must be charged before deducting the following:

(2-18-02)

**a.** Cash discounts. Sales tax must be computed on the full amount of the purchase price before the cash discount is subtracted. When an invoice or other billing document states that a discount will be allowed if payment is made before a certain date, then the discount is presumed to be a cash discount. Discounts allowed on payments received after the stated date are presumed to be cash discounts unless proven to the contrary by clear and convincing evidence.

(7-1-93)

**b.** Manufacturer's rebates. Except as provided by Subsection 051.02 of this rule, sales tax must be computed on the full amount of the purchase price without regard to the manufacturer's rebate. Any rebate received by the purchaser from the manufacturer, distributor, or any person other than the retailer will not reduce the retail sales price subject to tax. Rebates paid by a retailer to the consumer will also be included in the price subject to sales tax if the retailer has been reimbursed by a third party, such as the manufacturer.

(2-18-02)

**c.** Manufacturer's discount coupons. Sales tax must be computed on the full amount of the purchase price before subtracting the coupon amount. This includes coupons issued by a manufacturer allowing the purchaser to buy one item and get a second item free if the retailer will be reimbursed by the manufacturer.

(7-1-98)

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d. Food Stamps and WIC. Purchases of food with coupons issued under the Federal Food Stamp Program or food checks issued by the Federal Special Supplemental Food Program for Women, Infants, and Children, (WIC), are exempt from sales or use tax. When a purchaser uses manufacturer's discount coupons along with food stamps or WIC checks to purchase food items that qualify under these programs, the discount value of the coupon is subject to sales tax. For example, a food stamp recipient purchases fifteen dollars (\$15) worth of eligible food, surrenders manufacturer's discount coupons valued at two dollars (\$2), and pays with thirteen dollars (\$13) in food stamps. Sales tax is due on the two dollar (\$2) discounted amount. The purchaser may not use food stamps or WIC checks to pay sales tax due. (7-1-98)

**02. Adjustments That Apply Before Tax Calculation.** Tax is charged after the deduction of the following: (2-18-02)

a. Trade discounts. A trade discount is a reduction from the posted or listed price offered by a retailer which is not an inducement for prompt payment and which, when applied to the posted or listed price, establishes the true selling price to be paid by the purchaser. (7-1-93)

b. Retailer's rebates. A retailer's rebate is an amount of money or property paid by a retailer to a purchaser which is conditioned upon the recipient making a purchase from the retailer. However, if a retailer is reimbursed by a manufacturer or other third party, the transaction is not a retailer's rebate and the rebate amount is included in the sales price subject to sales tax. This would be the case when a purchaser sends the rebate claim to the retailer, the retailer sends the rebate amount to the purchaser and the manufacturer reimburses the retailer. (2-18-02)

c. Retailer discount coupons. Retailer discount coupons are coupons issued by a retailer which entitle the holder to purchase the issuing retailer's products at less than the posted or listed retail price. (7-1-93)

d. Manufacturer's motor vehicle rebates. Effective July 1, 1990, a manufacturer's rebate offered to a purchaser of a motor vehicle may be deducted from the purchase price of the vehicle before computing the tax IF the rebate is used to reduce the retail sales price of the vehicle, or is used as a down payment on the purchase. The dealer's customer invoice must show the manufacturer rebate as a deduction to, or down payment on, the purchase price of the vehicle. Only manufacturer rebates offered on motor vehicles qualify for the exclusion from tax. Manufacturer rebates offered on trailers, off-highway equipment, and other property will be treated as discussed in Subsection 051.01.b. of this rule. (7-1-96)

**03. Coupon Books.** ~~A coupon book is a set of two (2) or more coupons sold to a purchaser who may use the coupons as all or part of the purchase price of tangible personal property subject to sales taxes. The sale of coupon books is not subject to sales tax. When a retailer discount coupon from a coupon book is used to purchase merchandise, the discount allowed by the coupon is not included in the purchase price subject to tax. Sales tax applies to the amount paid by the purchaser to the retailer after allowance of the discount permitted by the coupon.~~ (7-1-98)(\_\_\_\_)

a. The sale of a coupon book that contains coupons offering discounts is deemed to be the sale of an intangible and is therefore not taxable. (\_\_\_\_)



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**b.** When the purchaser of a coupon book redeems one (1) of the coupons, the discount allowed by the coupon is not included in the purchase price subject to tax if the retailer is not reimbursed by a manufacturer or other third party. (\_\_\_\_)

**04. Donated Goods.** The donor is the consumer of donated goods and must pay sales or use tax on the purchase price of the goods. (7-1-98)

**05. Gift Certificates.** A gift certificate purchased from a vendor entitles a recipient to tangible personal property or services when presented to the vendor. The purchase of a gift certificate is not a taxable transaction. When the gift certificate is presented for redemption a sale is consummated. If the sale is a transfer of tangible personal property, the vendor must collect sales tax at the time of sale. Tax applies to the purchase price of the tangible personal property, irrespective of any cash refunded on any difference between the face value of the gift certificate and the purchase price. If the sale is for services not subject to tax under the Sales Tax Act, the vendor will not collect sales tax. (7-1-93)

**06. ~~Discount Purchasing Memberships and Cards.~~** ~~The purchase of a card or membership which entitles the holder to purchase tangible personal property at a discounted price is a sale subject to sales tax, if the seller of the membership is the same as the seller of the merchandise. Examples of taxable fees include membership fees to rent or purchase from video rental stores, discount lumber retail outlets, and discount dry goods outlets.~~ **Buy One Get One Free Discounts.** If a retailer offers a “buy one get one free” discount in which the buyer purchases an item and receives another item of the same kind at no additional charge, the price subject to tax is the actual price paid after the discount is taken. Use tax is not applicable to the item sold at no charge; however, if a manufacturer’s discount allows the purchaser to receive a free item for which the retailer will be reimbursed by the manufacturer the price subject to tax is the full amount before the discount is calculated. (7-1-98)(\_\_\_\_)

**07. Complimentary Gift With Purchase of an Item.** (\_\_\_\_)

**a.** If a retailer offers a complimentary item to a customer at the time of, and in connection with, the sale of tangible personal property, the gift is considered a part of the sale. The item given away is deemed to be purchased for resale by the retailer; however, if the sale is of an item exempt from tax and the sale of the gift item would have been taxable, the retailer is responsible for use tax on the gift. This subsection applies only to sales of tangible personal property. (\_\_\_\_)

**i.** Example: A retailer advertises that every purchaser of a refrigerator will receive a bike at no additional charge. Since both the bike and the refrigerator were purchased for resale, the retailer would not owe tax when it purchases either. When it sells the bike together with the refrigerator, the amount subject to sales tax is the sales price of the refrigerator. (\_\_\_\_)

**ii.** Example: A retailer offers to give a free coffee mug to anyone who purchases fifteen (15) gallons of gas. Since the sale of the gasoline is exempt pursuant to Section 63-3622C, Idaho Code the retailer would not charge any tax to the purchaser. The retailer must pay use tax on its purchase price of the coffee mug. (\_\_\_\_)

**b.** If a retailer offers to give away a promotional item to anyone with no purchase

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required, then the retailer did not purchase the promotional item for resale. The retailer must pay sales or use tax on its purchase price of the promotional items given away. ( )

c. This rule applies only to items given away by sellers of tangible personal property. See Rule 028 of these rules for items given away by hotels and motels. See Rule 041 of these rules for items given away by restaurants. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

## 101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).

**01. In General.** An exemption is provided from the sales and use tax for motor vehicles and trailers sold or leased to commercial or private carriers to be substantially used in interstate commerce. ~~The exemption is effective beginning April 1, 1989.~~ Commercial or private carriers shall include the business of transportation of persons or commodities owned by the carrier or another, but shall not include farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code. (7-1-93)( )

**02. Motor Vehicles.** An exemption is provided from the sales and use tax for motor vehicles sold or leased to a purchaser who will: (7-1-93)

a. Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; (4-6-05)

b. Register the vehicle under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

c. Operate the vehicle in a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any registration period under the international registration plan. (4-6-05)

**03. Trailers.** An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

a. Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

b. The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in ~~any calendar year~~ any registration period under the International Registration Plan or other similar plan. (7-1-93)( )

**04. Title or Base Plate.** The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

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**05. Documentation.** Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

**06. Repair Parts and Supplies.** The exemption does not apply to parts, ~~glider kits as defined by Section 49-123, Idaho Code,~~ supplies, or other tangible personal property purchased by persons engaged in interstate commerce. Purchases of glider kits as defined by Section 49-123, Idaho Code, will qualify if they are assembled into glider kit vehicles that will be immediately registered under the International Registration Plan or other similar plan. (7-1-93)( )

**07. Failure To Meet Interstate Mileage Requirement.** Use tax will become due at the end of any registration period for which the out of state mileage is less than ten percent (10%) of the total fleet mileage. Tax will be due on the value of the trucks and trailers on the twentieth day of the month following the end of the registration period. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

## 107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).

**01. In General.** This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

**02. Gifts of Motor Vehicles.** When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

**a.** No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

**b.** The recipient assumes no indebtedness. (7-1-93)

**c.** The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

**d.** The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

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i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

ii. The back of the title may be marked as a gift and signed by the donor. (2-18-02)

### 03. Nonresidents. ( )

**a.** A nonresident does not owe use tax on the use of a motor vehicle which is registered or licensed under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection, a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (~~2-18-02~~)( )

**b.** For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. ( )

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects and privately owned motor vehicles, if he acquired them while he resided in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (2-18-02)

**a.** If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

**b.** Exclusion from the tax applies only to motor vehicles owned by an individual. A privately owned motor vehicle is one which is owned by, and titled to, a private individual or individuals. (3-6-00)

**05. Military Personnel.** Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to

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nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)

**06. Tax Paid to Another State.** When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (~~7-1-93~~)( )

**a.** If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

**b.** Example: A Wyoming resident buys a vehicle there for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his Wyoming title to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to Wyoming was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the five hundred dollars (\$500) tax due Idaho. The assessor will collect two hundred dollars (\$200) tax. (4-11-06)

**c.** Example: A vehicle was purchased by a Colorado resident two (2) months before moving to Idaho. The applicant paid three percent (3%) Colorado state sales tax, one and six tenths of one percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total Colorado general sales tax paid was six and two tenths percent (6.2%). Since the Idaho tax rate is five percent (5%), no tax is due Idaho because the amount of tax paid to Colorado exceeds the amount owed Idaho. (4-11-06)

**d.** Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. ( )

**de.** A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

**ef.** Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

**fg.** Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

**07. Sales to Family Members.** The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters.

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Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

**08. Sales to American Indians.** An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

**09. Bulk Sale Transfers.** A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

**10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.** (5-3-03)

a. Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

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ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under eight hundred fifty (850) pounds, forty-eight (48) inches or less in width, having a wheel base of sixty-one (61) inches or less, and traveling on low pressure tires of less than ten (10) psi. (3-20-04)

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

f. To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable.  
( )

**11. Motor Vehicles and Trailers Used in Interstate Commerce.** The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

**12. Related Party Transfers and Sales.** Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

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## **(BREAK IN CONTINUITY OF SECTIONS)**

### **119. SUCCESSOR'S LIABILITY (RULE 119).**

**01. Making Inquiries.** Section 63-3628, Idaho Code, provides that when a vendor sells out his business or stock of goods, the buyer shall make inquiry of the State Tax Commission and withhold from the purchase price any amount of tax that may be due until such time as the vendor, seller, produces a receipt stating that no tax is due. If the purchaser fails to withhold from the purchase price the tax due, he becomes personally liable for the tax. (5-3-03)

**02. Written Inquiry Required.** The purchaser must make written inquiry to the Boise Office of the State Tax Commission setting forth the following: (5-3-03)

**a.** The name, location, and seller's permit number of the business they are purchasing. (7-1-93)

**b.** A statement that they are purchasing the business or stock of goods. (7-1-93)

**c.** An inquiry as to any sales or use tax liability of the business they are purchasing. (7-1-93)

**03. Copy of Earnest Money.** The purchaser must attach to the written inquiry a copy of any earnest money or similar agreement already entered into with the prospective seller. If no earnest money agreement has been entered into, then the seller must provide written authorization to the State Tax Commission to release the information to the prospective buyer. (5-3-03)

**04. Written Statement from State Tax Commission.** The State Tax Commission, after receiving the written inquiry from the purchaser as to the amount due, will issue a written statement to the purchaser setting forth the amount of tax due by the seller, if any. The State Tax Commission shall advise the prospective buyer only of any amount of sales or use tax that may be due to the State Tax Commission under the Sales Tax Act. The release of any other information is not authorized. In the case that the prospective buyer requests to see the prospective seller's sales or use tax filing record in order to determine if the business is profitable, the prospective seller must provide a Power of Attorney appointing the prospective buyer as attorney in fact to receive confidential information regarding sales or use tax filings on behalf of the prospective seller. (5-3-03)

**05. Application for Seller's Permit Number.** Upon final sale, the purchaser must file an application, ~~either~~ Form IBR-1 ~~or IBR-2~~, for a new seller's permit number with the State Tax Commission. The seller must forward his seller's permit to the State Tax Commission for cancellation. (5-3-03)( )



# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.02 - SALES TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0102-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635, and 63-3039 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 488 through 491.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jim Husted (208) 334-7500.

DATED this 30<sup>th</sup> day of October, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635, and 63-3039.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

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must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Sales Tax Rule 027 states that the portion of the sales price of computer software maintenance agreements (agreements that include both upgrades of new software and support services) that represents upgrades or new software is subject to sales tax. The portion that represents support services is not. If the price of the upgrades is not stated separately the entire sales price is taxable. Very few software developers separately state the two charges. In many cases it is clear that a significant portion of the sales price represents nontaxable services it is difficult to estimate the percentage. This results in inequity and is an administrative burden for both the Commission and the taxpayers.

To add a provision to Rule 027 stating that 50% of the sales price is presumed to be subject to tax when services and software are not separately stated.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There would be a negative fiscal impact of \$600,000 to \$800,000 for the next fiscal year, assuming a 5% tax rate.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 21<sup>st</sup> day of August, 2006.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

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## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).**

#### **01. Hardware and Computers Defined. (3-6-00)**

**a.** Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (3-6-00)

**b.** Computers are programmable machines or devices having information processing capabilities and include word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)

#### **02. Computer Software, Storage Media and Transfer Media Defined. (3-6-00)**

**a.** Computer Software. Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location. (3-6-00)

**b.** Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, and semiconductor memory chips used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols. (3-6-00)

**03. Hardware.** The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (3-6-00)

**04. Canned Software.** The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program. (3-6-00)

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a. Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer. (3-6-00)

b. Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. (3-6-00)

c. Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (3-6-00)

**05. Maintenance Contracts.** Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. ~~(7-1-93)~~( )

b. If the maintenance contract is optional to the purchaser of canned software, ~~then the portion of the contract fee representing upgrades or new software is subject to sales tax if the fees for support services and upgrades are separately stated. If the fees are not separately stated the entire charge for the maintenance contract is subject to sales tax.~~ (3-6-00)( )

i. Then only the portion of the contract fee representing upgrades or enhancements is subject to sales tax if the fee for any maintenance agreement support services is separately stated; ( )

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades or enhancements, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; ( )

iii. If the maintenance contract only provides canned computer software upgrades or enhancements, and no maintenance agreement support services, then the entire sales price of the contract is taxable; ( )

iv. If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. ( )

**06. Reports Compiled by a Computer.** The sale of statistical reports, graphs,

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diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)

**a.** Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

**b.** Example: A company sells mailing lists which are stored on a computer disk. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)

**c.** Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

**d.** When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

**e.** Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

**07. Training Services.** Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

**a.** When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

**b.** When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

**c.** When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

**08. Custom Software.** The transfer of title, possession, or use for a consideration of

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custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

**a.** Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

**b.** If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

**c.** Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

**09. Purchases for Resale.** Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-0602**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The effective date of the amendment to temporary rule is **January 1, 2006**. The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 67-5226(2) Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and temporary rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 82 through 84.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s): A temporary/proposed rule change is needed for Rule 317 due to the enactment of the homeowner's exemption changes in House Bill 421, effective January 1, 2006.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact to state government.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Alan Dornfest (208) 334-7500.

DATED this 3<sup>rd</sup> day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **January 1, 2006**.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is

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hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 317 needs to be changed to be consistent with the homeowner's exemption changes in House Bill 421 when applying the homeowner's exemption to properties subject to the occupancy tax and to make technical corrections.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**A temporary/proposed rule change is needed for Rule 317 due to the enactment of the homeowner's exemption changes in House Bill 421, effective January 1, 2006.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact to state government.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Alan Dornfest  
Tax Policy Supervisor



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State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7500

### THE FOLLOWING IS THE TEXT OF THE PENDING RULE

#### 317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).

Section 63-317, Idaho Code. (5-3-03)

**01. Property Subject to Occupancy Tax.** Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (4-6-05)

**02. Value Prorated Monthly.** The value for occupancy tax purposes shall be prorated at least monthly. (3-23-94)

**03. Notice of Appraisal.** When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

**04. Examples for Calculation of Value Less ~~Homeowner's~~ Homestead Exemption (HO).** The following examples show the ~~correct~~ procedure for the calculation of the taxable value subject to the occupancy tax less the ~~homeowner's~~ homestead exemption (HO):~~(4-6-05)(1-1-06)T~~

**a.** Example for prorated market value ~~of one hundred thousand dollars (\$100,000) or more~~ exceeding maximum amount of the homestead exemption, as prescribed in statute for tax year 2006. For years after 2006, the maximum amount of the homestead exemption is subject to modification by the Housing Price Index.

Full Market Value of Home:	\$42300,000
Prorated Market Value for 11 Month Occupancy:	$\$42300,000 \times 11/12 = \$410275,000$
Taxable Value:	$\$410275,000 - \$5075,000 \text{ (HO)} = \$6200,000$

~~(4-6-05)(1-1-06)T~~

**b.** Example for prorated market value ~~of less than one hundred thousand dollars (\$100,000)~~ resulting in less than the maximum amount of the homestead exemption.

Full Market Value of Home:	\$120,000
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Prorated Market Value for 3 Month Occupancy:	$\$120,000 \times 3/12 = \$30,000$
Taxable Value:	$\$30,000 - \$15,000 \text{ (HO)} = \$15,000$

~~(4-6-05)~~(1-1-06)T

**05. Market Value.** The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget.

~~(3-23-94)~~(1-1-06)T

**06. Allocation to Urban Renewal Agencies.** ~~Beginning with any distribution of occupancy tax resulting from occupancy taxes levied after approval of levies for the year 2000, the Occupancy tax revenue shall be allocated to any applicable school district and urban renewal agency. The revenue distribution to any applicable school district must be satisfied prior to the distribution to the urban renewal agency. Only the occupancy tax revenue from properties within the revenue allocation area shall be distributed in this manner. School districts shall be allocated an amount of occupancy tax equal to four tenths of one percent (0.4%) of the prorated value of property subject to occupancy tax, provided that such property is located within the school district and within the revenue allocation area of an urban renewal agency.~~ (4-5-00)(1-1-06)T(1-1-06)T

**07. Property Qualifying for the Homestead Exemption on Occupancy Value.** When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. (1-1-06)T

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-0603**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 67-5226(2) Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 85 through 87.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s): A temporary/proposed rule change is needed for Rule 700 due to the enactment of the property tax reduction (circuit breaker) changes in House Bill 422, effective January 1, 2006, and the homeowner's exemption changes in House Bill 421, effective January 1, 2006.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This change to Rule 700 only implements the laws (House Bill 422 and House Bill 421) and has no fiscal impact to state government beyond that caused by these laws.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Alan Dornfest (208) 334-7500.

DATED this 3<sup>rd</sup> day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Property Tax Administrative Rules****Docket No. 35-0103-0603**  
**PENDING RULE**

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hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 700 needs to be changed to be consistent with the property tax reduction changes in House Bill 422, effective January 1, 2006, and the homeowner's exemption changes in House Bill 421, effective January 1, 2006 and to make technical corrections.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**A temporary/proposed rule change is needed for Rule 700 due to the enactment of the property tax reduction (circuit breaker) changes in House Bill 422, effective January 1, 2006, and the homeowner's exemption changes in House Bill 421, effective January 1, 2006.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This change to Rule 700 only implements the laws (House Bill 422 and House Bill 421) and has no fiscal impact to state government beyond that caused by these laws.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**STATE TAX COMMISSION**  
**Property Tax Administrative Rules**

**Docket No. 35-0103-0603**  
**PENDING RULE**

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7500

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **700. DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT (RULE 700).**

Section 63-701, Idaho Code. (3-15-02)

**01. Blind.** A person for whom there exists the medically documented opinion that the person is functionally blind as defined in Section 67-5402(2), Idaho Code. (3-30-01)

**02. Burden of Proof.** See Rule 600 of these rules. (3-15-02)

**03. Claimant's Income.** All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one spouse lives in a medical care facility or otherwise lives outside the home except as provided in Rule 709 of these rules. For the purposes of excluding from claimant's income any return of principal paid by the recipient of an annuity, follow these guidelines. ~~(3-15-02)~~(1-1-06)T

**a.** An annuity means a contract sold by an insurance company to the claimant or claimant's spouse and designed to provide payments to the holder at specified equally spaced intervals or as a lump sum payment with the following conditions: (1-1-06)T

**i.** The annuity must not be part of any pension plan available to an employee; (1-1-06)T

**ii.** No tax preference is given to the money spent to purchase the annuity (purchase payments must not reduce the buyer's taxable income); (1-1-06)T

**iii.** The buyer of the annuity must have purchased the annuity voluntary and not as a condition of employment or participation in an employer provided pension system; and (1-1-06)T

**iv.** Earnings from investments in the annuity must be tax-deferred prior to withdrawal. (1-1-06)T

**b.** Annuities do not include KEOGH plans, Individual Retirement Accounts (IRAs), employer provided pensions, and similar financial instruments. Life insurance premiums shall not be treated as the principal of an annuity. (1-1-06)T

**c.** The recipient of the annuity payment(s), the claimant or claimant's spouse, has the burden of proving the income is the principal paid by the recipient. Such proof includes copies of the holder's annuity contract and any other documentation clearly indicating the conditions listed

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

## STATE TAX COMMISSION Property Tax Administrative Rules

Docket No. 35-0103-0603  
PENDING RULE

in Subparagraphs 700.03.a.i. through 700.03.a.iv. of this Rule are met. IRS form 1099 does not provide sufficient proof. (1-1-06)T

**04. Fatherless/Motherless Child.** Fatherless/Motherless child for purposes of Section 63-701(1), Idaho Code, means a child judicially determined to be abandoned, as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male/female parent or a child whose male/female parent has had his parental rights terminated pursuant to court order or is deceased. (3-30-01)

**05. Proportional Reduction of Value.** Proportional reduction of value pursuant to Section 63-701(7), Idaho Code, is required for partial ownership of otherwise eligible property. (3-15-02)

**a.** There is no reduction of value for community property with no other interests except as provided in Rules 610.07 and 709.04 of these rules. Additionally, there is no reduction in value for the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than a five percent (5%) interest in the entity unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation. (3-15-02)

**b.** In other cases, benefits are to be calculated by applying the claimant's property tax reduction benefit to the eligible net taxable value of the claimant's share of the property. This value is determined by multiplying the market value of the land and of the improvement times the claimant's percent of ownership and subtracting the claimant's homeowner's exemption. For example:

<b>Land Market Value</b>	<b>\$ 50,000</b>
<b>Improvement Market Value</b>	<b>\$150,000</b>
<b>Gross Market Value</b>	<b>\$200,000</b>
<b>Percent of Ownership of Claimant</b>	<b>50%</b>
<b><u>Claimant's Share of Land Market Value &amp; Improvement Market Value</u></b>	<b><u>\$ 25,000</u></b>
<b>(Land Market Value &amp; Improvement Market Value x Percentage of Ownership)</b>	<b><u>100,000</u></b>
<i>Claimant's Share of Improvement Market Value (Improvement Market Value x Percentage of Ownership)</i>	<i>\$ 75,000</i>
<b>Claimant's Homeowner's Exemption</b>	<b>&lt;\$ 37,500</b>
<b>Claimant's Share of Improvement and Land Market Value x 50% (not to exceed <del>\$50,000</del> <u>75,000 for 2006</u>)</b>	<b><u>50,000</u>&gt;</b>

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

STATE TAX COMMISSION  
Property Tax Administrative Rules

Docket No. 35-0103-0603  
PENDING RULE

Claimant's Eligible Net Taxable Value equals	
<del>Land plus Improvement</del>	\$ <del>62,500</del>
Claimant's Share of Market Value less Homeowner's Exemption	<u>50,000</u>
<del>(\$25,000 + \$75,000 - \$37,500 = \$62,500)</del> (\$100,000 - \$50,000 =	
<u>\$50,000</u> )	

In this example, the claimant's property tax reduction benefit will be applied to the tax on his/her net taxable market value of ~~\$62,500~~ 50,000. ~~(3-15-02)~~(1-1-06)T

**06. Physician.** Physician shall mean a licensed physician, as defined in Section 54-1803(3), Idaho Code. (3-30-01)

**07. Widow/Widower.** A widow/widower is a person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled. (3-15-02)

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-0604**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 67-5226(2) Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 88 through 90.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s): A temporary/proposed rule change is needed for Rule 802 due to the repeal of the exemption under Section 63-602FF, Idaho Code, by House Bill 676, effective January 1, 2006.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact to state government; however, taxing districts could be able to increase property tax funded budgets because of increases on the new construction rolls.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Alan Dornfest (208) 334-7500.

DATED this 3<sup>rd</sup> day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures



# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Property Tax Administrative Rules****Docket No. 35-0103-0604**  
**PENDING RULE**

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have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 802 needs to be changed to provide direction on when new construction roll values can be increased because of the “change in land use classification” resulting from the repeal of the partial exemption under Section 63-602FF, Idaho Code, by House Bill 676.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

A temporary/proposed rule change is needed for Rule 802 due to the repeal of the exemption under Section 63-602FF, Idaho Code, by House Bill 676, effective January 1, 2006.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact to state government; however, taxing districts could be able to increase property tax funded budgets because of increases on the new construction rolls.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Property Tax Administrative Rules**

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**Docket No. 35-0103-0604**  
**PENDING RULE**

P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7500

***THE FOLLOWING IS THE TEXT OF PENDING RULE***

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**

Sections 63-802, and 63-301A, ~~and 63-602FF~~, Idaho Code.

~~(3-20-04)~~(1-1-06)T

**01. Definitions.**

(4-5-00)

**a.** “Change of Land Use Classification.” “Change of land use classification” shall mean any change in land use resulting in a category change and in an increase in taxable land value to be reflected on the current property roll. (1-1-06)T

**i.** This increase in value due to change of land use classification shall be reported on the new construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. (1-1-06)T

**ii.** The increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. ~~(4-11-06)~~(1-1-06)T

**iii.** When the land value, had the land remained in its previous use category, is less than the land value for a previous year in which value for the same property was included in the value reported on the new construction roll, the value calculated in Subparagraph 802.01.a.ii. of this Rule shall be reduced by the value included on any previous new construction roll. (1-1-06)T

**b.** “Nonresidential Structure.” “Nonresidential structure” shall mean any structure listed by the assessor in any category not described as residential, manufactured homes, or improvements to manufactured homes pursuant to Rule 130 of these rules. (5-3-03)

**02. New Construction Roll Listing.** “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, including qualifying new construction within any revenue allocation area within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (7-1-99)

**03. Manufactured Housing.** “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION Property Tax Administrative Rules

Docket No. 35-0103-0604  
**PENDING RULE**

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**04. Partial New Construction Values.** The net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Any increase in a nonresidential parcel's taxable value, due to new construction, shall be computed by subtracting the previous year's or years' partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value shall not be included on the new construction roll. (7-1-97)

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2004. The improvement was occupied February 2, 2004. Assume the ten thousand dollars (\$10,000) value was on the 2004 new construction roll. Assume that in 2005 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2005 new construction roll is calculated as follows:

2005 Value	\$90,000
2004 Value Already Reported on New Construction Roll	<\$10,000>
2005 New Construction Roll Value (this improvement)	\$ 80,000

(4-11-06)

**05. Change in Exemption Status.** (5-3-03)

**a.** A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W, Idaho Code. (7-1-99)

**b.** For any rural subdivision parcels of land changing use as a result of removal of the exemption under Section 63-602FF, Idaho Code, the increase in value resulting from the removal of this exemption shall not be listed on the new construction roll when the increase in value was already listed on any previous year's new construction roll. (5-3-03)

**06. Value of Annexation to Exclude New Construction.** When determining the maximum property tax funded budget that may be certified under Section 63-802, Idaho Code, the annexation value shall include all taxable value within the annexed area except the value of new construction. The value of new construction within the annexed area shall be excluded from the value of the annexed area but included on the new construction roll for the taxing district annexing the area where the property is located, thereby preventing double counting of new construction value within the annexed area. (4-11-06)

**07. Notification of New Construction Roll and Annexation Values.** On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-0605**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 67-5226(2) Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule.

**The pending rule is being adopted as proposed. The original text of the proposed rule was published in the July 5, 2006 Idaho Administrative Bulletin, Vol. 06-7, pages 91 through 94.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s): A temporary/proposed rule change is needed for Rule 989 due to the enactment of the date for payment of the recapture tax in House Bill 443, effective January 1, 2006.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact to state government.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Alan Dornfest (208) 334-7500.

DATED this 3<sup>rd</sup> day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Property Tax Administrative Rules**

**Docket No. 35-0103-0605**  
**PENDING RULE**

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**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

1. **House Bill 443 establishes the date by which the taxpayer will make payment for recapture of property tax exemption in lieu of investment tax credit. Rule 989 must be corrected to be consistent with law and the table for recapture percentage must be corrected to be consistent with income tax rules.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

1. **A temporary/proposed rule change is needed for Rule 989 due to the enactment of the date for payment of the recapture tax in House Bill 443, effective January 1, 2006.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact to state government.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7500.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 26, 2006.

DATED this 2nd day of June, 2006.

Alan Dornfest

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION Property Tax Administrative Rules

Docket No. 35-0103-0605  
**PENDING RULE**

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Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7500

### ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

#### **989. QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989).**

Section 63-3029B, Idaho Code. (4-6-05)

**01. In General.** If a taxpayer has elected the property tax exemption (also know as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property tax benefit shall be subject to recapture. (4-6-05)

**02. Notification by Taxpayer That Property Ceases to Qualify.** If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the ~~date by which the personal property declaration or operator's statement is due in the next calendar year~~ due date of that taxpayer's income tax return for the taxable year in which such event occurs. If no personal property declaration or operator's statement is required, the notification must be filed by the following March 15. Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following: ~~(4-6-05)~~(1-1-06)T

- a. A description of the item that ceases to qualify, (4-6-05)
- b. The county where the item was located, (4-6-05)
- c. The date the item was placed in service, (4-6-05)
- d. The date the item was no longer qualified for the QIE, (4-6-05)
- e. The amount of value exempted from property tax each year, and (4-6-05)
- f. The amount of the property tax benefit recapture. (4-6-05)

**03. Notification in Case of Failure by Taxpayer to File Form 49ER.** If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. (4-6-05)

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

## STATE TAX COMMISSION Property Tax Administrative Rules

Docket No. 35-0103-0605  
PENDING RULE

**04. Protest of Recapture.** If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. (4-6-05)

**05. Property Tax Benefit Subject to Recapture.** For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than <del>or equal to</del> one (1) year	100%
<del>More than</del> <u>Equal to</u> one (1) year but less than <del>or equal to</del> two (2) years	80%
<del>More than</del> <u>Equal to</u> two (2) years but less than <del>or equal to</del> three (3) years	60%
<del>More than</del> <u>Equal to</u> three (3) years but less than <del>or equal to</del> four (4) years	40%
<del>More than</del> <u>Equal to</u> four (4) years but less than <del>or equal to</del> five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. (4-6-05)(1-1-06)T

**06. County Average Property Tax Levy -- Locally Assessed Property Located in One County or Nonapportioned Centrally Assessed Property.** For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. (4-6-05)

**a. Property Tax Budget Summation.** For each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. (4-6-05)

**b. Average Property Tax Levy.** The average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a., of this rule by the

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taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. (4-6-05)

c. Notice to Each County Auditor. The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. (4-6-05)

**07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property.** For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in December each year. (4-6-05)

**08. Noticing Remittance for the Recapture of the Property Tax Benefit.** When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: (4-6-05)

- a. Owner. Name of the owner receiving the QIE; (4-6-05)
- b. Property Description. A description of the property that received the QIE; (4-6-05)
- c. First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year; (4-6-05)
- d. Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; (4-6-05)
- e. Tax Code Area Number. The number of the tax code area within which that item was located; and (4-6-05)
- f. Amount Remitted. The amount of money remitted for any item. (4-6-05)

**09. No Allocation of Remittances to Urban Renewal Agencies.** Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. (4-6-05)

**10. Penalty and Interest.** Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. (4-6-05)

**11. Cross Reference.** For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. (4-6-05)



# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-0606**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 67-5226(2) Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 6, 2006 Idaho Administrative Bulletin, Vol. 06-9, pages 151 through 153.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason(s): Temporary rule 609 is needed to be in compliance with governing state law. The temporary rule implements the provisions of House Bill 421 that became law July 1, 2006. The rule outlines the procedures to index the homeowner's exemption each year and updates examples for consistency with this legislation.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact to state government.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Alan Dornfest (208) 334-7500.

DATED this 3rd day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of this temporary rule is January 1, 2006.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105 and 63-105A.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the supporting reasons for adopting the temporary rule:

**Rule 609:**

To implement new legislation (HB421) and the procedures to index the homeowner's exemption each year and to update the examples for consistency with this legislation.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is needed to be in compliance with governing state law. The temporary rule implements the provisions of House Bill 421 that became law July 1, 2006. The rule outlines the procedures to index the homeowner's exemption each year and updates examples for consistency with this legislation.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no fee or charge being imposed through the adoption of this temporary rule.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are implementing the provisions of a governing state law.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary rule, contact Alan Dornfest (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

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**Property Tax Administrative Rules**

**Docket No. 35-0103-0606**  
**PENDING RULE**

DATED this 4th day of August, 2006.

Alan Dornfest  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **609. PROPERTY EXEMPT FROM TAXATION -- ~~RESIDENTIAL IMPROVEMENTS~~ HOMESTEAD (RULE 609).**

Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. ~~(4-6-05)~~(1-1-06)T

**01.** *Homeowner's* **Homestead** **Exemption.** ~~This exemption~~ The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. ~~(3-15-02)~~(1-1-06)T

**02.** **Idaho Annual Housing Price Index Change.** Annually, the State Tax Commission shall calculate the maximum dollar-value limit for the homeowner's exemption based on the change in the Idaho annual housing price index published by the United States office of federal housing enterprise oversight. The following procedure shall be used: (1-1-06)T

**a.** Step 1. Calculate the average Idaho housing price index of the four (4) most recently available quarters as of September 15. (1-1-06)T

**b.** Step 2. Calculate the average Idaho housing price index of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (1-1-06)T

**c.** Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (1-1-06)T

**d.** Step 4. Multiply the factor determined in Step 3 by the current maximum dollar-value limit on the homeowner's exemption to produce the new dollar-value limit. (1-1-06)T

**023.** **Partial Ownership.** Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a

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corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.02.a., of this rule unless the owner provides documented evidence of ownership interest in the improvement. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b., of these rules.

(4-11-06)

**a.** Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Occupied by Mr. Smith
Prorated Ownership Interest ( <u>land and improvement</u> )	<del>\$44</del> 62,000	Mr. Smith's interest
Homeowner's Exemption	<del>\$20,500</del> 31,000	For Mr. Smith as owner occupant
Residential Improvement	\$67,000	Occupied by Mr. Anderson
Prorated Ownership Interest ( <u>land and improvement</u> )	<del>\$33</del> 54,500	Mr. Anderson's interest
Homeowner's Exemption	<del>\$16,750</del> 27,250	For Mr. Anderson as owner occupant

~~(4-11-06)~~(1-1-06)T

**b.** Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

Item Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	<del>\$41,000</del> 51,500	For Mr. Smith <del>as occupant and sole owner</del>
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson

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Item Description	Value	Notes
Homeowner's Exemption	<del>\$33,500</del> <u>44,000</u>	For Mr. Anderson <del>as occupant and sole owner</del>

~~(4-11-06)~~(1-1-06)T

**034. Determination of Residency.** The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. (4-11-06)

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-0607**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-105A, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rules were published in the September 6, 2006 Idaho Administrative Bulletin, Vol. 06-9, pages 154 through 200.

Subsection 803.01.g., which is the only change made to Rule 803, is being removed from the pending rule. As a result Rule 803 will remain unchanged and returned to the original codified language. Because Rule 803 is being removed and reverted back to the codified text, Rule 803 is not being republished in this Bulletin. The remainder of this docket is being adopted as originally proposed with no additional changes.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Alan Dornfest (208) 334-7500.

DATED this 11<sup>th</sup> day of October, 2006.

***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that

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this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-105A.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 006:** To provide references to the correct publications for tax year 2007.

**Rule 114:** To collect from assessors, homeowners' information by value brackets and business type information.

**Rule 115:** To provide for assessors to submit to the tax commission information on the property tax value within cities.

**Rule 130:** To identify five primary categories simplifying the equalization of values by county and making the equalization of values by county and by school district more consistent.

**Rule 131, 315:** To enhance equalization by reducing the non-occurrence of equalization for property types within which fewer sales occur and by helping taxable values keep pace with the local market.

**Rule 217:** To direct the assessors to be consistent with a recent Idaho Supreme Court decision by basing income on actual rents plus the financial benefits of tax credits for section 42, low-income housing projects when using the income approach.

**Rule 225:** To implement new legislation (HB763), requiring each fire district to submit to the tax commission the approvals from existing fire districts and/or cities when annexing.

**Rule 509:** To clarify what value information the assessors need to submit to the tax commission and to update statutory reference based on new legislation (HB413).

**Rules 510, 511 and 512:** To describe the secondary categories that the assessors will use to notify property owners of the values being assessed on land, improvements, and other property and to report values assessed on land, improvements, and other property to the tax commission.

**Rule 613:** To provide a formula for the calculation of the five (5) year average farm credit system interest rate, delete examples, and add cross references.

**Rule 614:** To provide a separate shorter rule with examples relating to the calculation of the taxable value of land and add cross references.

**Rule 615:** To clarify that tax credits for section 42, low-income housing projects are not contracts or contract rights and reference the recent Idaho Supreme Court decision on which this is based.

**Rule 635:** To be consistent with the repeal of Section 63-602FF, Idaho Code, by HB676, this rule is being deleted.

**Rule 645:** To add cross references to all other property tax rules relating to land actively

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devoted to agriculture.

**Rule 717:** To provide for county assessors and county auditors to submit the property tax reduction data electronically as well as hard copy.

**Rule 801:** To clarify that the school plant facilities levy resulting from action by the state department of education under House Bill 743.

**Rule 803:** To add the definition of new taxing district for budget and levy purposes.

**Rule 902:** To provide for county treasurers to mail property tax bills with zero balance due to property tax reduction applicants.

**Rule 939:** To provide direction to taxing districts so judgment levies are used within two years of an order by court or Board of Tax Appeals.

**Rule 968:** To create a new rule that replaces prior provisions of property tax rule 614, relating to clarifications for exemptions from yield tax and categorizing land used to grow Christmas trees and other annual forest crops, and to add cross references.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 4th day of August, 2006.

Alan Dornfest  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544



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## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **006. INCORPORATION BY REFERENCE (RULE 006).**

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**01. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at main office of the State Tax Commission as listed in Rule 005 of these rules. (5-3-03)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

**a.** “Standard on Ratio Studies” published in 1999 by the International Association of Assessing Officers. (5-3-03)

**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2005~~6~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-11-06~~)(\_\_\_\_)

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2005~~6~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-11-06~~)(\_\_\_\_)

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 2005~~6~~ and the first quarter in 2006~~7~~ by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. (~~4-11-06~~)(\_\_\_\_)

**e.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

**f.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

**g.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

**h.** “Second-Growth Yield, Stand, and Volume Table for the Western White Pine

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Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

i. “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

### (BREAK IN CONTINUITY OF SECTIONS)

#### **114. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 114).**

Sections 63-105A and 63-509, Idaho Code. To provide needed value information under Subsection 63-105A(2), Idaho Code, each assessor will to the extent practicable report the following information to the State Tax Commission in the same manner and at the same time as the abstracts under Section 63-509, Idaho Code. ( )

**01. Homeowner’s Exemption Information.** Beginning in 2007 and each year thereafter, each county assessor will to the extent practicable report the total market value and exempted value of all property (land and improvements) used for residential purposes and granted the homeowner’s exemption under Section 63-602G, Idaho Code, for the current year’s assessment roll. Additionally, beginning in 2007 and each year thereafter, each county assessor will to the extent practicable report to the State Tax Commission the following stratification for improved properties granted the homeowner’s exemption. ( )

**a.** Total quantity and total market value of all properties less than or equal to twenty-five thousand dollars (\$25,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner’s exemption that are individually less than or equal to twenty-five thousand dollars (\$25,000) in market value. ( )

**b.** Total quantity and total market value of all properties more than twenty-five thousand dollars (\$25,000) but less than or equal to fifty thousand dollars (\$50,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner’s exemption that are individually more than twenty-five thousand dollars (\$25,000) but less than or equal to fifty thousand dollars (\$50,000) in market value. ( )

**c.** Total quantity and total market value of all properties more than fifty thousand dollars (\$50,000) but less than or equal to seventy-five thousand dollars (\$75,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner’s exemption that are individually more than fifty thousand dollars (\$50,000) but less than or equal to seventy-five thousand dollars (\$75,000) in market value. ( )

**d.** Total quantity and total market value of all properties more than seventy-five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000). Each county assessor will report the total number of and the total market value for all properties

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granted the homeowner's exemption that are individually more than seventy-five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000) in market value.

( )

**e.** Total quantity and total market value of all properties more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty-five thousand dollars (\$125,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty-five thousand dollars (\$125,000) in market value.

( )

**f.** Total quantity and total market value of all properties more than one hundred twenty-five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred twenty-five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000) in market value.

( )

**g.** Total quantity and total market value of all properties more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy-five thousand dollars (\$175,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy-five thousand dollars (\$175,000) in market value.

( )

**h.** Total quantity and total market value of all properties more than one hundred seventy-five thousand dollars (\$175,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred seventy-five thousand dollars (\$175,000) in market value.

( )

**02. Personal Property Data.** Beginning in 2008 and each year thereafter, each county assessor will to the extent practicable separately report to the State Tax Commission the total market value and any exempt value of personal property for each of the following classifications or subclassifications thereof from the North American Industry Classification System (NAICS) and will separately detail this value by applicable secondary categories.

( )

**a.** Forestry and logging personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all forestry and logging personal property within NAICS classifications 113, 115, and 1133 as listed on the personal property declaration by the property owner or an agent for the property owner.

( )

**b.** Mining personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all mining personal property within NAICS classifications 21, 212, and 213 as listed on the personal property declaration by the property owner or an agent for the property owner.

( )

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c. Heavy construction personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all heavy construction personal property within NAICS classification 234 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

d. Food manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all food manufacturing personal property within NAICS classification 311 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

e. Dairy product manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all dairy product manufacturing personal property within NAICS classification 3115 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

f. Wood product manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all wood product manufacturing personal property within NAICS classification 321 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

g. Chemical manufacturing personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all chemical manufacturing personal property within NAICS classification 325 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

h. Computer and electronic product manufacturing (high tech) personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all computer and electronic product manufacturing (high tech) personal property within NAICS classification 334 as listed on the personal property declaration by the property owner or an agent for the property owner. ( )

i. Locally assessed telecommunications personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all locally assessed telecommunications personal property within NAICS classifications 5133 and 51332 as listed on the personal property declaration by the property owner or an agent for the property owner.( )

j. Other personal property data. Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all other personal property within NAICS classification 81 or any other NAICS classification not listed in Paragraphs 114.02.a. through 114.02.i. as listed on

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the personal property declaration by the property owner or an agent for the property owner.( )

**03. Cross Reference.** For the descriptions of secondary categories, see Rules 510, 511, and 512 of these rules. ( )

**115. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 115).**  
Sections 63-105A and 63-509, Idaho Code. ( )

**01. City Values by Secondary Category.** To provide needed value information under Subsection 63-105A(2), Idaho Code, each assessor will report to the county auditor the market value and exempted value of all property within any city or the portion of any city within the county by secondary categories, described in Rules 510, 511, and 512 of these rules, in the same manner as the abstracts required for each county and each school district under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**02. City Abstracts to Accompany Abstracts.** Each county auditor will include the city abstract described in Subsection 115.01 of this rule when submitting to the State Tax Commission the abstracts required under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**03. Cross Reference.** For the descriptions of secondary categories and clarification of responsibilities relating to listing and reporting values by secondary categories, see Rules 509, 510, 511, and 512 of these rules. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

**130. ~~EQUALIZATION BY CATEGORY — IDENTIFICATION AND REAPPRAISAL~~**  
**DESCRIPTION OF PRIMARY CATEGORIES USED TO TEST FOR EQUALIZATION**  
**(RULE 130).**

Sections 63-109 and 63-315, Idaho Code. ~~Property shall be identified for assessment purposes in the categories outlined below. These categories are to be used on the current year's assessment notice, assessment roll and abstract.~~ The State Tax Commission establishes the primary categories listed herein for the purpose of testing values in each county and each school district for equalization by the State Tax Commission under Section 63-109, Idaho Code.~~(3-15-02)~~( )

**01. ~~Category 1—Irrigated Agricultural Land.~~** ~~Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This irrigated land must be capable of and normally produce harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city.~~ **Definitions.** The following definitions apply for the purposes

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of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. (4-H-06)( )

**a.** Primary Category. Primary category means the five categories established and described in Subsections 130.02 through 130.06 of this rule and used by the State Tax Commission to test for equalization under Section 63-109, Idaho Code. ( )

**b.** Secondary Category. Secondary category means the categories established and described in Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**02.** ~~**Category 2—Irrigated Grazing Land.**~~ Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. **Vacant Residential Land Category.** Vacant residential land is all vacant land used for residential purposes. The assessor listed this land in secondary categories 12, 15, 18, or 20, as described in Rule 510 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-H-06)( )

**03.** ~~**Category 3—Nonirrigated Agricultural Land.**~~ Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This nonirrigated land must be capable of and normally produce harvestable crops without man-made irrigation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. **Improved Residential Property Category.** Improved residential property is all improvements used for residential purposes and the land upon which these improvements are located. The assessor listed this property in secondary categories 10 and 31, 46, or 48, 12 and 34, 46, or 48, 15 and 37, 46, or 48, 18 and 40, 20 and 41, 46, or 48, 26, 46, 48, or 50 together with secondary category 47 as appropriate for inclusion when valuing this property, as described in Rules 510 and 511 of these rules, for the purposes of listing property on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-H-06)( )

**04.** ~~**Category 4—Meadow Land.**~~ Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See

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~~Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this category. This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city.~~ **Vacant Commercial or Industrial Land Category.** Vacant commercial or industrial land is all vacant land used for commercial or industrial purposes. The assessor listed this property in secondary categories 11, 13, 14, 16, 17, 21, or 22, as described in Rule 510 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-H-06)( )

**05. ~~Category 5 – Dry Grazing Land.~~ Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this category. This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. **Improved Commercial or Industrial Property Category.** Improved commercial or industrial property is all improvements used for commercial or industrial purposes and the land upon which these improvements are located. The assessor listed this property in secondary categories 11 and 33, 13 and 35, 14 and 36, 16 and 38, 17 and 39, 21 and 42, 22 and 43, 27, or 51, as described in Rules 510 and 511 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-H-06)( )**

**06. ~~Category 6 – Productivity Forestland.~~ All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forestland under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code. **Manufactured Homes on Leased Land Category.** Manufactured homes on leased land are all manufactured homes on leased land that the assessor listed in secondary categories 49 or 65 together with secondary category 47 as appropriate for inclusion when valuing this property, as described in Rule 511 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the State Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. (4-H-06)( )**

**07. ~~Category 7 – Bare Forestland.~~ All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city. **Conversion Table: Secondary Categories to Primary Categories.****

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Conversion Table: Secondary Categories to Primary Categories	
Secondary Categories	Primary Categories
12, 15, 18, or 20	Vacant Residential Land
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	Improved Residential Property
11, 13, 14, 16, 17, 21, or 22	Vacant Commercial or Industrial Land
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	Improved Commercial or Industrial Property
47, 49, or 65	Manufactured Housing on Leased Land

(3-30-01)(\_\_\_\_)

**08. ~~Category 8—Speculative Homesite.~~** *In each county with a population of less than one hundred thousand (100,000), rural subdivision plat lots granted the exemption under Section 63-602FF, Idaho Code, for the current year's assessment roll. Never place any land, even when within a platted subdivision, currently meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, in this category; such land must always be in the appropriate category(ies) 1 through 5.* **Cross Reference.** *For clarification of responsibilities relating to listing values on the valuation assessment notices or reporting values on the abstracts, see Rule 114, 115, 509, 510, 511, and 512 of these rules. For descriptions of secondary categories used to list land values on the valuation assessment notices and report land values on the abstracts, see Rule 510 of these rules, used to list improvement values on the valuation assessment notices and report improvement values on the abstracts, see Rule 511 of these rules, and used to list values for all property other than land or improvements on the valuation assessment notices and report these values on the abstracts, see Rule 512 of these rules.*

(4-11-06)(\_\_\_\_)

**09. ~~Category 9—Patented Mineral Land.~~** *All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code.*

(3-30-01)

**10. ~~Category 10—Homesite Land.~~** *Land being utilized for homesites on categories 1 through 9.*

(3-23-94)

**11. ~~Category 11—Recreational Land.~~** *Land used in conjunction with recreation but not individual homesites.*

(3-23-94)

**12. ~~Category 12—Rural Residential Tracts.~~** *Rural residential land not in a properly recorded subdivision.*

(3-23-94)

**13. ~~Category 13—Rural Commercial Tracts.~~** *Rural commercial land not in a properly recorded subdivision.*

(3-23-94)

**14. ~~Category 14—Rural Industrial Tracts.~~** *Rural industrial land not in a properly*



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~~recorded subdivision. (3-23-94)~~

~~15. **Category 15 – Rural Residential Subdivisions.** Rural residential land in a properly recorded subdivision. (3-23-94)~~

~~16. **Category 16 – Rural Commercial Subdivisions.** Rural commercial land in a properly recorded subdivision. (3-23-94)~~

~~17. **Category 17 – Rural Industrial Subdivisions.** Rural industrial land in a properly recorded subdivision. (3-23-94)~~

~~18. **Category 18 – Other Land.** Land not compatible with other categories. (4-5-95)~~

~~19. **Category 19 – Waste.** Public rights-of-way includes roads, ditches, and canals. Use this category to account for total acres of land ownership. Only list acres in this category on the abstract. (3-15-02)~~

~~20. **Category 20 – Residential Lots or Acreages.** Land inside city limits zoned residential. (3-30-01)~~

~~21. **Category 21 – Commercial Lots or Acreages.** Land inside city limits zoned commercial. (3-30-01)~~

~~22. **Category 22 – Industrial Lots or Acreages.** Land inside city limits zoned industrial. (3-30-01)~~

~~23. **Category 25 – Common Areas.** Land and improvements not included in individual property assessments. (4-5-95)~~

~~24. **Category 26 – Residential Condominiums.** Land and improvements included in individual assessments of condominiums in areas zoned residential or in areas zoned commercial or industrial but maintained as residences. (7-1-97)~~

~~25. **Category 27 – Commercial or Industrial Condominiums.** Land and improvements included in individual assessments of condominiums in areas zoned commercial or industrial. (3-23-94)~~

~~26. **Category 30 – Improvements.** Other than residential, located on category 20. (3-23-94)~~

~~27. **Category 31 – Improvements.** Residential improvements located on category 10. (3-30-01)~~

~~28. **Category 32 – Improvements.** Other than residential, located on categories 1 through 12 and 15. (3-23-94)~~

~~29. **Category 33 – Improvements.** Located on category 11. (3-23-94)~~

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- ~~30. Category 34—Improvements. Residential in nature, located on category 12. (3-23-94)~~
- ~~31. Category 35—Improvements. Commercial in nature, located on category 13. (3-23-94)~~
- ~~32. Category 36—Improvements. Industrial in nature, located on category 14. (3-23-94)~~
- ~~33. Category 37—Improvements. Residential in nature, located on category 15. (3-23-94)~~
- ~~34. Category 38—Improvements. Commercial in nature, located on category 16. (3-23-94)~~
- ~~35. Category 39—Improvements. Industrial in nature, located on category 17. (3-23-94)~~
- ~~36. Category 40—Improvements. Located on category 18. (3-23-94)~~
- ~~37. Category 41—Improvements. Residential in nature, located on category 20. (3-23-94)~~
- ~~38. Category 42—Improvements. Commercial in nature, located on category 21. (3-23-94)~~
- ~~39. Category 43—Improvements. Industrial in nature, located on category 22. (3-23-94)~~
- ~~40. Category 44—Improvements. Taxable improvements located on otherwise exempt property under the same ownership. (3-23-94)~~
- ~~41. Category 45—Utility Systems. Locally assessed utility systems not under the jurisdiction of the State Tax Commission. (3-30-01)~~
- ~~42. Category 46—Manufactured Housing. Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare a real property has been filed but becomes effective the following year. (5-3-03)~~
- ~~43. Category 47—Improvements to Manufactured Housing. Additions not typically moved with manufactured housing. (3-23-94)~~
- ~~44. Category 48—Manufactured Housing. Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. (5-3-03)~~

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- ~~45. Category 49 – Manufactured Housing. Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. (5-3-03)~~
- ~~46. Category 55 – Boats or Aircraft. Unlicensed watercraft or unregistered aircraft. (3-23-94)~~
- ~~47. Category 56 – Construction Machinery, Tools, and Equipment. Unlicensed equipment such as cranes, tractors, scrapers, and rock crushers, used in the building trade or road construction. (3-23-94)~~
- ~~48. Category 57 – Equities in State Property. Property purchased from the state under contract. (4-5-95)~~
- ~~49. Category 59 – Furniture, Fixtures, Libraries, Art, and Coin Collections. Trade articles used commercially for convenience, decoration, service, storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease. (3-23-94)~~
- ~~50. Category 60 – Improvements on Railroad Rights-of-Way. Improvements located on railroad rights-of-way under separate ownership. (3-23-94)~~
- ~~51. Category 61 – Improvements by Lessee Other Than Category 62. Improvements made by the tenant or lessee to landlord's property. (3-23-94)~~
- ~~52. Category 62 – Improvements on Exempt or Public Land. Taxable improvements which are owned separately from exempt or public land on which they are located. (3-23-94)~~
- ~~53. Category 63 – Logging Machinery, Tools, and Equipment. Unlicensed logging machinery, shop tools, and equipment not assessed as real property. (3-23-94)~~
- ~~54. Category 64 – Mining Machinery, Tools, and Equipment. Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-23-94)~~
- ~~55. Category 65 – Manufactured Housing. Manufactured housing not considered real property located on exempt, rented or leased land. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-15-02)~~
- ~~56. Category 66 – Net Profits of Mines. That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses. See Section 63-2802, Idaho Code, and Rule 982 of these rules. (3-30-01)~~
- ~~57. Category 67 – Operating Property. Property assessed by the State Tax Commission. (3-30-01)~~
- ~~58. Category 68 – Other Miscellaneous Machinery, Tools, and Equipment.~~

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~~Unlicensed machinery, tools, and equipment not used in construction, logging, mining, or not used exclusively in agriculture.~~ (3-15-02)

~~59. Category 69—Recreational Vehicles. Unlicensed recreational vehicles.~~ (3-23-94)

~~60. Category 70—Reservations and Easements. Reservations, including mineral rights reserved divide ownership of property rights. Easements convey use but not ownership.~~ (3-23-94)

~~61. Category 71—Signs and Signboards. Signs and signboards, their bases and supports.~~ (3-23-94)

~~62. Category 72—Tanks, Cylinders, Vessels. Containers.~~ (3-23-94)

~~63. Category 81—Exempt Property. For county use in keeping an inventory, including acreage, of exempt real and personal property.~~ (3-23-94)

### 131. USE OF RATIO STUDY ~~IN~~ TO TEST FOR EQUALIZATION IN COUNTIES (RULE 131).

Section 63-109, Idaho Code.

(5-3-03)(\_\_\_\_)

**01. Equalization Ratio Study.** Each year the State Tax Commission shall conduct a ratio study to assist in the equalization of assessments of property within and among the primary categories ~~of property~~ established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the “Standard on Ratio Studies” referenced in Rule 006 of these rules. The annual ratio study shall test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be the median for equalization ratio studies conducted beginning October 1, 2006. (4-11-06)(\_\_\_\_)

**02. Tested For Equalization.** Beginning with the 2007 ratio study to be complete prior to the first Monday in April, 2008, categories ~~which will~~ to be tested for equalization purposes ~~will include the following~~ are the primary categories, described in Subsections 130.02 through 130.06 of these rules, provided ~~that~~ adequate samples can be obtained. (4-5-95)(\_\_\_\_)

~~a. Improved Urban Residential: Abstract Items 20 and 41;~~ (4-5-95)

~~b. Unimproved Urban Residential: Abstract Item 20;~~ (4-5-95)

~~c. Improved Rural Residential: Subcategory 1 (tracts): Abstract Items 12, 18, 34, and 40; Subcategory 2 (subdivisions): Abstract Items 15 and 37;~~ (4-5-95)

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*d. Unimproved Rural Residential: Subcategory 1 (tracts): Abstract Items 12 and 18; Subcategory 2 (subdivisions): Abstract Item 15; (4-5-95)*

*e. Commercial: Abstract Items 13, 16, 21, 27, 33, 35, 38, and 42. (Urban and rural categories and land and improved categories will be analyzed separately, if adequate samples are available.) (3-30-01)*

*f. Residential Condominiums: Abstract Item 26. (3-30-01)*

*g. Manufactured Housing Without Land: Abstract Items 46, 47, 49, and 65. (5-3-03)*

*h. Manufactured Housing With Land: Abstract items 46, 47, and 48 with residential land. (4-11-06)*

*03. Separate and Combined Analyzations. (3-30-01)*

*a. Categories 18 and 40 may be analyzed separately from Categories 12 and 34 if adequate samples are available. If these categories (18 and 40) are not used for residential property, they should not be included in the 12/34 study. (3-30-01)*

*b. Manufactured housing sales that include land may be analyzed as an independent category or in combination with other improved residential property sales with the same land category. The manufactured housing sales with land will be analyzed as an independent category unless the State Tax Commission and county assessor agree that analysis in combination with other improved residential property sales with the same land category would produce a more representative sample. (3-15-02)*

*c. Samples for the categories listed in Subsection 131.02 of this rule may be analyzed in combinations designed to produce studies of improved residential property, unimproved residential property, commercial property, and manufactured housing. Such analysis will be conducted upon request by the county assessor, provided that the assessor provides evidence to the State Tax Commission that the resulting combined category studies will provide results that are more representative of the categories to be equalized. (4-11-06)*

**043. Follow-Up Ratio Study.** When the annual ratio study provided in Subsections 131.01 and 131.02 of this rule, discloses that assessments in any primary category *of property* as defined described in Subsections 131.02 *and through* 131.036 of *this* these rules *in a county* are out of compliance with the equalization standards of this rule, the State Tax Commission shall conduct a follow-up ratio study. The follow-up ratio study shall test the assessments for January 1 of the year following the year tested by the annual ratio study and shall be based on property sales occurring during the calendar year immediately preceding that date. The State Tax Commission shall notify the county assessor of the results of the follow-up ratio study. The notice shall indicate whether any adjustments will be considered by the State Tax Commission at its next equalization meeting in August based on either the annual or any follow-up ratio study and the reason for the proposed adjustments. (4-11-06)(\_\_\_\_)

**054. Use of Ratio Study Results.** The results of the annual ratio study or any follow-up

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ratio study shall be one (1) source of information upon which the State Tax Commission may rely when ~~equalizing~~ testing assessments ~~of property by category~~ for equalization purposes under Section 63-109, Idaho Code. When the results of any ratio study on any ~~property~~ primary category, ~~as defined~~ described in Subsections 131.02 ~~and through 131.036~~ of ~~this~~ these rules, show, with reasonable statistical certainty as defined in Subsection 131.087 of this rule, that the appropriate measure of level of any ~~primary~~ category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that ~~primary~~ category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in any ~~primary~~ category or subcategory included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property. ~~The State Tax Commission may order the county auditor to adjust the value of manufactured homes with land as if the combination were a category. If categories have been combined for analysis,~~ Within any ~~primary~~ category except as provided in Subsection 131.05 of this rule, adjustment will not be considered for any ~~secondary~~ category, described in Rule 510, 511, or 512 of these rules, that does not have at least one (1) observation in the ratio study conducted for ~~the combined~~ that ~~primary~~ categories. (4-11-06)( )

**05. Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. ( )

**06. Use of Alternate Ratio Study.** When the follow-up ratio study required by Subsection 131.043 of this rule does not measure the true assessment level, the State Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the State Tax Commission has reason to question the representativeness of the sample used in an annual or follow-up ratio study conducted on any ~~primary~~ category ~~of property~~, the State Tax Commission may delay implementation of any order to adjust property values until two (2) successive years' ratio studies fail to produce an appropriate measure of level between ninety percent (90%) and one hundred ten percent (110%). (4-11-06)( )

**07. Submission of Additional Information.** Any party may petition the State Tax Commission to consider any information or studies relevant to equalization. The petition shall include a description of the information to be presented and the petitioner's conclusions drawn from the information. (4-5-95)

**08. Reasonable Statistical Certainty.** For the purposes of ~~this section~~ Rule 131 and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any ~~primary~~ category is not equalized shall mean that the appropriate measure of level determined by

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the ratio study for the primary category must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Such a determination shall occur if: ~~(4-11-06)~~(\_\_\_\_)

a. The appropriate measure of level for the primary category(ies) being tested is less than ninety percent (90%) or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or ~~(3-30-01)~~(\_\_\_\_)

b. The appropriate measure of level for the primary category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio studies on the primary category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%). No ratio study conducted prior to January, 2007 will be considered as one of the most recent previous two (2) ratio studies. ~~(3-30-01)~~(\_\_\_\_)

**09. Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. (\_\_\_\_)

### (BREAK IN CONTINUITY OF SECTIONS)

## 217. RULES PERTAINING TO MARKET VALUE DUTY OF COUNTY ASSESSORS (RULE 217).

Section 63-208, Idaho Code. (\_\_\_\_)

**01. Market Value Definition.** Market value is the most probable amount of United States dollars or equivalent for which a property would exchange hands between a knowledgeable and willing seller, under no compulsion to sell, and an informed, capable buyer, under no compulsion to buy, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. (7-1-97)

a. The assessor shall value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions shall be subtracted. (7-1-97)

b. Personal property shall be valued at retail level. (7-1-93)

**02. Appraisal Approaches.** Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are: ~~(3-30-01)~~(\_\_\_\_)

a. The sales comparison approach; (3-30-01)

b. The cost approach; and (3-30-01)

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- c. The income approach. (3-30-01)

**03. Appraisal Procedures.** Market value for assessment purposes shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. *This includes the use of market rent, not contract rent.* (3-30-01)(\_\_\_\_)

**a.** The appraisal procedures, methods, and techniques using the income approach to determine the market value for assessment purposes of income producing properties, except those described in Paragraph 217.03.b. of this rule, must use market rent, not contract rent. (\_\_\_\_)

**b.** When considering all three approaches to value, the appraisal procedures, methods, and techniques, using the income approach to determine the market value for assessment purposes of low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, must use actual rent plus the monetary benefit of any income tax credits. (\_\_\_\_)

**04. Cross Reference.** For clarification of the income to include when using the income approach to value low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, see *Brandon Bay, Ltd. Partnership v. Payette County*, 142 Idaho 681, 132 P.3d 438 (2006). (\_\_\_\_)

### (BREAK IN CONTINUITY OF SECTIONS)

## 225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).

Sections 31-1411, 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3029B, and 63-3638, Idaho Code. (4-6-05)(\_\_\_\_)

**01. Definitions.** The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. (3-15-02)

**a.** Taxing Districts. The term taxing districts as used in this rule means taxing districts and taxing units. (3-15-02)

**b.** Alter. Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. (3-15-02)

**c.** Contiguous. Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. (3-15-02)

**d.** Deannex. Deannex means to delete or remove a portion but not all of a boundary



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for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA. (4-6-05)

**e.** Disincorporate. Disincorporate or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. (4-6-05)

**f.** Dissolve. Dissolve or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. (4-6-05)

**g.** Legal Description. Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: (3-15-02)

i. Section, township, range and meridian. (3-15-02)

ii. An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. (3-15-02)

iii. A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. (3-15-02)

iv. Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure requirement may be approved by the State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: (3-15-02)

(1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or (3-15-02)

(2) References to cardinal directions, government survey distances, and section or aliquot part corners; or (3-15-02)

(3) References to recorded subdivision or town site plats, with copies of such plats; or (3-15-02)

(4) Legislatively established boundaries as defined by reference to Idaho Code sections. (3-15-02)

v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. (3-15-02)

**h.** Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying

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legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)

- i. Section, township, range, and meridian identifications. (3-15-02)
- ii. North arrow, bar scale, and title block. (3-15-02)
- iii. District name and ordinance number or order date. (3-15-02)
- iv. Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)
- v. Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)
- vi. Variations from the requirements of Paragraph 225.01.h., of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (4-6-05)

**02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs.** The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than January 10 of the following year when any action creating or altering said boundary occurs after December 10. (3-15-02)

- a. A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)
- b. A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)
- c. A copy of the ordinance or order effecting the formation or alteration. (4-5-00)
- d. For fire districts annexing territory within an existing fire district and/or city, a copy of the written approval from that existing fire district and/or city. ( )

**03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs.** (3-15-02)

- a. No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3029B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. If the disincorporating or dissolving entity can provide a map showing the last

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known boundaries of the entity, this map should accompany the ordinance or order. (4-6-05)

**b.** Upon receipt of the ordinance or order without an accompanying map of the boundaries from a disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) and send a copy of a map showing the affected tax code area(s) to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list and map shall be sent by the fourth Friday of January. (3-15-02)

**c.** After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). (3-15-02)

**04. Digital Map Information.** Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. (3-15-02)

**05. Deadline for Completion.** December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (3-15-02)

**06. Approval of Property Tax Levy or Revenue Allocation.** For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it: (3-15-02)

**a.** Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or (3-15-02)

**b.** Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or (4-5-00)

**c.** Has boundaries which overlap with like cities, taxing districts or RAAs. (3-15-02)

**07. Notification of Approval or Disapproval.** The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to any affected urban renewal agency and the auditor(s) and assessor(s) of the involved county(ies). In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. The State Tax Commission shall send such letter within thirty (30) days of receipt of the document to which the disapproval relates, but not later than the fourth Friday of January except during the first quarter of the calendar year for documents relating to the next tax year.

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(4-6-05)

**08. One Uniform System.** The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. (4-5-00)

**09. Tax Code Areas.** The State Tax Commission shall create a separate, unique number for each tax code area. Only the State Tax Commission shall initiate or change a tax code area number. (3-15-02)

**10. Furnished By The State Tax Commission.** The State Tax Commission will furnish annually, without charge, one (1) set of updated tax code area maps, a listing of cities, taxing districts or RAAs included in each tax code area, and a list of changes in city, taxing district or RAA boundaries to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other tax code area maps. (3-15-02)

### (BREAK IN CONTINUITY OF SECTIONS)

#### **315. USE OF RATIO STUDIES TO EQUALIZE - SCHOOL DISTRICTS (RULE 315).**

Section 63-315, Idaho Code.

~~(5-3-03)~~(\_\_\_\_)

**01. Procedures for School District Ratio Studies.** The ratio study conducted by the State Tax Commission to comply with the requirements of Section 63-315, Idaho Code, shall be conducted in accordance with the "Standard on Ratio Studies" referenced in Rule 006 of these rules. The following specific procedures will be used. (4-11-06)

**a.** Information on property sales, which meet the requirements of arm's length and market value sales, will be obtained and assembled into samples representing various primary categories, of property and described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, within designations defined in Subsection 315.02 of this rule in each school district. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each school district between October 1 of the year preceding the year for which adjusted market value is to be computed and September 30 of the year for which adjusted market value is to be computed. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which adjusted market value is to be computed, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. ~~(4-11-06)~~(\_\_\_\_)

**b.** A ratio will be determined for each sale by dividing the market value for assessment purposes of the property by the adjusted sale price or appraised value. (7-1-98)

**c.** A statistical analysis is to be conducted for the sales and any appraisals in each

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property designation ~~defined~~ described in Subsection 315.02 of this rule in each school district and appropriate measures of central tendency, uniformity, reliability, and normality computed.

(4-11-06)( )

d. With the exception of any property designations with extended time frames or added appraisals, if fewer than five (5) sales and appraisals are available, no adjustment to the taxable value of the designation will be made.

(7-1-98)

e. If there are five (5) or more sales and appraisals and it is determined with reasonable statistical certainty that the property designation is not already at market value for assessment purposes, an adjusted market value will be computed for the school district by dividing the taxable value for the year for which adjusted market value is to be determined by the appropriate ratio derived from the ratio study. The appropriate ratio to be used shall be the weighted mean ratio calculated from the sample for each designation, unless it can be clearly demonstrated that this statistic has been distorted by nonrepresentative ratios. In this case the median may be substituted:

(3-30-01)

f. Within each school district, adjusted market value or taxable value for each primary and each applicable secondary category of real, personal and operating property will be summed to produce the total adjusted market value for the school district. The school district taxable value will then be divided by this adjusted market value to produce the overall ratio of assessment in each school district. Statewide totals are to be calculated by compiling county totals.

(7-1-98)( )

g. Urban renewal increment values will not be included in the taxable value or the adjusted market value for any school district.

(7-1-98)

h. "Reasonable statistical certainty," that the property designation in question is not at market value for assessment purposes, is required. Such certainty is tested using ninety percent (90%) confidence intervals about the weighted mean or median ratios. If the appropriate confidence interval includes ninety-five percent (95%) or one hundred five percent (105%), there is not "reasonable statistical certainty" that the property designation is not at market value for assessment purposes.

(3-30-01)

i. Primary and secondary categories ~~of property~~ subject to adjustment following the procedure outlined in this rule and ratio study designations from which measures of central tendency used for adjustments will be derived are:

<i>Category</i>	<i>Property Category</i>	<i>Ratio Study Designation</i>
44	Urban Residential Improvements	Residential
20	Urban Residential Land	Residential
37	Rural Residential Subdivision Improvements	Residential
45	Rural Residential Subdivision Land	Residential
34 & 40	Rural Residential Tract and Other Rural Improvements	Residential

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<i>Category</i>	<i>Property Category</i>	<i>Ratio Study Designation</i>
12 & 18	<i>Rural Residential Tracts and Other Lands</i>	<i>Residential</i>
42	<i>Urban Commercial Improvements</i>	<i>Commercial</i>
24	<i>Urban Commercial Land</i>	<i>Commercial</i>
35 & 38	<i>Rural Commercial Tract and Subdivision Improvements</i>	<i>Commercial</i>
13 & 16	<i>Rural Commercial Tracts and Subdivision Land</i>	<i>Commercial</i>
46, 47, & 65	<i>Manufactured Homes and Attachments</i>	<i>Residential</i>
48 & 49	<i>Manufactured Homes Declared to be Real Property</i>	<i>Residential</i>
26	<i>Residential Condominiums</i>	<i>Residential</i>
27	<i>Commercial Condominiums</i>	<i>Commercial</i>

Secondary Categories	Primary Categories	Ratio Study Designations
12, 15, 18, or 20	<u>Vacant Residential Land</u>	<u>Residential</u>
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	<u>Improved Residential Property</u>	<u>Residential</u>
47, 49, or 65	<u>Manufactured Home on Leased Land</u>	<u>Residential</u>
11, 13, 14, 16, 17, 21, or 22	<u>Vacant Commercial or Industrial Land</u>	<u>Commercial</u>
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	<u>Improved Commercial or Industrial Property</u>	<u>Commercial</u>

(4-11-06)( )

j. For all ~~other property~~ secondary categories, described in Rule 510, 511, or 512 of these rules but not contained in the list in Subsection Paragraph 315.01.i. of this rule, adjusted market value will equal taxable value. (4-11-06)( )

k. “Appraisal” or “appraised value” refers to any State Tax Commission provided independently conducted property appraisal. (7-1-98)

**02. Use of Property Designations.** In computing the ratio for each school district, the State Tax Commission will designate property as residential; or commercial, ~~or manufactured housing~~ and shall assign appropriate ~~property~~ primary categories, ~~defined~~ described in Rule Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, to these designations as shown in Paragraph 315.01.i. of this rule. For each school district, adjusted market value shall be computed by dividing the appropriate ratio ascertained for each of these designations into the sum of the taxable values for each primary and secondary category of property assigned to a designation. Except as provided in Subsection 315.06 of this rule, for the taxable value in any secondary category to be included in said sum, at least one (1) observation (sale or appraisal) from that secondary category must be present in the

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ratio study. If the ratio for any given designation in a school district indicates that the market value for assessment purposes cannot be determined with reasonable statistical certainty to differ from statutorily required market value, the taxable value shown on the school district abstract(s) required pursuant to Subsection 315.04 of this rule for each of the secondary categories included in that designation shall be the adjusted market value for said designation for said school district.

(4-11-06)( )

**03. Assessor to Identify School Districts.** Each county assessor will provide to the State Tax Commission the school district in which each sale submitted for the ratio study is located.

(7-1-98)

**04. Abstracts of Value by School District.** Within each county, each county auditor shall provide to the State Tax Commission abstracts of the taxable value of all property within the portion of each school district in ~~each~~ that county. These abstracts shall be submitted in the same manner and at the same time as provided for county abstracts of value.

(7-1-98)( )

**05. Urban Renewal Increment and Exemption to be Subtracted.** The taxable value of each primary or secondary category ~~of property~~ within each school district shall not include the value that exceeds the value on the base assessment roll in any urban renewal district pursuant to Chapter 29, Title 50, Idaho Code, and shall not include the value of any exemption pursuant to Sections 63-602G, 63-602K, 63-602P, 63-602X, 63-602AA, 63-602BB, 63-602CC, ~~and 63-602FF~~ 63-602DD, 63-602GG, 63-602HH, 63-602II, 63-606A, or 63-3029B, Idaho Code.

(4-11-06)( )

**06. Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one (1) observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37.

( )

**07. Certification of Values.** The values required to be certified to the county clerk by the first Monday in April each year under Section 63-315, Idaho Code, shall be published on the State Tax Commission's web site or provided in an alternate format on request by the first Monday in April each year to satisfy this required certification.

( )

**08. Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules.

( )

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## (BREAK IN CONTINUITY OF SECTIONS)

**509. CITY, COUNTY, AND SCHOOL DISTRICT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES ~~ON COUNTY AND SCHOOL DISTRICT ABSTRACTS OF VALUE~~ (RULE 509).**

Sections 63-105A and 63-509, Idaho Code.

~~(5-3-03)~~( )

**01. Definitions.** The following definitions apply for the purposes of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. ( )

**a. Increment Value.** Increment value means, as defined in Section 50-2903, Idaho Code, the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is positive. ( )

**b. Primary Category.** Primary category means the categories established and described by Subsections 130.02 through 130.06 of these rules and used by the State Tax Commission to test for equalization under Section 63-109, Idaho Code. ( )

**c. Secondary Category.** Secondary category means the categories established and described by Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the State Tax Commission under Section 63-509, Idaho Code, and this Rule. ( )

**042. County and School District Abstracts to Balance.** The taxable value of property in each secondary category as shown on the abstracts prepared and submitted under Section 63-509, Idaho Code, shall equal the sum of the taxable value of property in each secondary category as shown on the school district abstracts, required under Rule 315 of these rules, for the portion of each school district located within each given county. ~~(3-20-04)~~( )

~~**02. Identification of Increment.** The value that exceeds the value on the base assessment roll in any urban renewal district, under Chapter 29, Title 50, Idaho Code, and Rule 804 of these rules is identified as the "increment".~~ ~~(3-20-04)~~

**03. Indicate Increment and Exemption Values ~~to be Indicated~~.** In addition to the value of exemptions required under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under Sections, ~~63-602FF~~, 63-602GG, 63-602HH, ~~63-602II~~, ~~63-602HH~~ (as enacted under House Bill 253 in 2005), 63-606A, and 63-3029B, Idaho Code, shall be indicated and subtracted from the taxable value shown for each secondary category of property on each city, county and school district abstract. ~~(4-11-06)~~( )

**04. Cross Reference.** See Rule 115 of these rules for requirements to submit city abstracts. For the descriptions of the primary categories used to test for equalization, see Subsections 130.02 through 130.06 of these rules. For descriptions of secondary categories used



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to list and report land values, see Rule 510 of these rules, used to list and report the value of improvements, see Rule 511 of these rules, or used to list and report all property values other than that for land or improvements, see Rule 512 of these rules. ( )

### **510. SECONDARY CATEGORIES FOR LAND - LISTING AND REPORTING (RULE 510).**

Section 63-509, Idaho Code. County assessors will use the secondary categories described in the following subsections, indicated by numbers, to list land values on the valuation assessment notices under Sections 63-301 and 63-308, Idaho Code. County assessors will use these secondary categories described in the following subsections, indicated by numbers, and the secondary categories described in the following paragraphs, indicated by letters, to report land values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**01. Secondary Category 1 - Irrigated Agricultural Land.** Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be capable of and normally producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ( )

**02. Secondary Category 2 - Irrigated Grazing Land.** Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ( )

**03. Secondary Category 3 - Non-Irrigated Agricultural Land.** Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This non-irrigated land must be capable of and normally producing harvestable crops without man-made irrigation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ( )

**04. Secondary Category 4 - Meadow Land.** Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604,

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Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ( )

**05. Secondary Category 5 - Dry Grazing Land.** Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ( )

**06. Secondary Category 6 - Productivity Forestland.** All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forest land under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code. ( )

**07. Secondary Category 7 - Bare Forestland.** All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city. ( )

**08. Secondary Category 8 - Speculative Homesite.** No value shall be reported in this category on any abstract submitted to the State Tax Commission after the property roll, subsequent property roll, and missed property roll abstracts have been submitted for calendar year 2005. ( )

**09. Secondary Category 9 - Patented Mineral Land.** All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code. ( )

**10. Secondary Category 10 - Homesite Land.** Land being utilized for homesites with secondary categories 1 through 9. Note: This land is always land with improvements located on it since land with no improvements should be in one (1) or more of categories 1 through 9. ( )

**11. Secondary Category 11 - Recreational Land.** Rural land used in conjunction with recreation but not individual homesites. ( )

**a. Secondary Category 11 - Vacant Recreational Land.** Vacant rural land used for recreational purposes but not individual homesites or in a properly recorded subdivision. ( )

**b. Secondary Category 11 - Improved Recreational Land.** Rural land with

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improvements, including exempt improvements, used for recreational purposes on that land but not individual homesites or in a properly recorded subdivision. ( )

**12. Secondary Category 12 - Rural Residential Tracts.** Rural residential land not in a properly recorded subdivision. ( )

**a.** Secondary Category 12 - Vacant Rural Residential Tracts. Vacant rural land used for residential purposes but not in a properly recorded subdivision. ( )

**b.** Secondary Category 12 - Improved Rural Residential Tracts. Rural land with improvements, including exempt improvements, used for residential purposes on that land but not in a properly recorded subdivision. ( )

**13. Secondary Category 13 - Rural Commercial Tracts.** Rural commercial land not in a properly recorded subdivision. ( )

**a.** Secondary Category 13 - Vacant Rural Commercial Tracts. Vacant rural land used for commercial purposes but not in a properly recorded subdivision. ( )

**b.** Secondary Category 13 - Improved Rural Commercial Tracts. Rural land with improvements, including exempt improvements, used for commercial purposes on that land but not in a properly recorded subdivision. ( )

**14. Secondary Category 14 - Rural Industrial Tracts.** Rural industrial land not in a properly recorded subdivision. ( )

**a.** Secondary Category 14 - Vacant Rural Industrial Tracts. Vacant rural land used for industrial purposes but not in a properly recorded subdivision. ( )

**b.** Secondary Category 14 - Improved Rural Industrial Tracts. Rural land with improvements, including exempt improvements, used for industrial purposes on that land but not in a properly recorded subdivision. ( )

**15. Secondary Category 15 - Rural Residential Subdivisions.** Rural residential land in a properly recorded subdivision. ( )

**a.** Secondary Category 15 - Vacant Rural Residential Subdivisions. Vacant rural land used for residential purposes and in a properly recorded subdivision. ( )

**b.** Secondary Category 15 - Improved Rural Residential Subdivisions. Rural land with improvements, including exempt improvements, used for residential purposes on that land and in a properly recorded subdivision. ( )

**16. Secondary Category 16 - Rural Commercial Subdivisions.** Rural commercial land in a properly recorded subdivision. ( )

**a.** Secondary Category 16 - Vacant Rural Commercial Subdivisions. Vacant rural land used for commercial purposes and in a properly recorded subdivision. ( )

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**b.** Secondary Category 16 - Improved Rural Commercial Subdivisions. Rural land with improvements, including exempt improvements, used for commercial purposes on that land and in a properly recorded subdivision. ( )

**17. Secondary Category 17 - Rural Industrial Subdivisions.** Rural industrial land in a properly recorded subdivision. ( )

**a.** Secondary Category 17 - Vacant Rural Industrial Subdivisions. Vacant rural land used for industrial purposes and in a properly recorded subdivision. ( )

**b.** Secondary Category 17 - Improved Rural Industrial Subdivisions. Rural land with improvements, including exempt improvements, used for industrial purposes on that land and in a properly recorded subdivision. ( )

**18. Secondary Category 18 - Other Land.** Land not compatible with other secondary categories. ( )

**a.** Secondary Category 18 - Vacant Other Land. Vacant land not compatible with other secondary categories. ( )

**b.** Secondary Category 18 - Improved Other Land. Land with improvements, including exempt improvements, on that land but not compatible with other secondary categories. ( )

**19. Secondary Category 19 - Waste.** Public Rights-of-Way includes roads, ditches, and canals. Use this secondary category to account for total acres of land ownership. Only list acres, not value, in this secondary category on the abstract. ( )

**20. Secondary Category 20 - Residential Lots or Acreages.** Land used for residential purposes and inside city limits. ( )

**a.** Secondary Category 20 - Vacant Residential Lots Or Acreages. Vacant land used for residential purposes and inside city limits. ( )

**b.** Secondary Category 20 - Improved Residential Lots Or Acreages. Land with improvements, including exempt improvements, used for residential purposes on that land and inside city limits. ( )

**21. Secondary Category 21 - Commercial Lots or Acreages.** Land used for commercial purposes and inside city limits. ( )

**a.** Secondary Category 21 - Vacant Commercial Lots Or Acreages. Vacant land used for commercial purposes and inside city limits. ( )

**b.** Secondary Category 21 - Improved Commercial Lots Or Acreages. Land with improvements, including exempt improvements, used for commercial purposes on that land and inside city limits. ( )

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**22. Secondary Category 22 - Industrial Lots or Acreages.** Land used for industrial purposes and inside city limits. ( )

**a. Secondary Category 22 - Vacant Industrial Lots Or Acreages.** Vacant land used for industrial purposes and inside city limits. ( )

**b. Secondary Category 22 - Improved Industrial Lots Or Acreages.** Land with improvements, including exempt improvements, used for industrial purposes on that land and inside city limits. ( )

**23. Secondary Category 25 - Common Area Vacant Land.** Common area vacant land not included in individual property assessments. ( )

**24. Secondary Category 45 - Utility System Vacant Land.** Vacant land used for locally assessed utility systems not under the jurisdiction of the State Tax Commission for appraisal. ( )

**25. Secondary Category 57 - Equities In Vacant Land Purchased From the State.** For identification purposes under Section 63-211, Idaho Code, vacant land purchased from the state under contract. ( )

**26. Secondary Category 81 - Exempt Land.** Category 81 is for county use to keep an inventory, including acreage, of exempt land. ( )

**27. Cross Reference.** For descriptions of secondary categories used to list values for improvements, see Rule 511 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ( )

### **511. SECONDARY CATEGORIES FOR IMPROVEMENTS - LISTING AND REPORTING (RULE 511).**

Section 63-509, Idaho Code. County assessors will use the following secondary categories to list improved property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and to report improved property values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**01. Secondary Category 25 - Common Area Land and Improvements.** Common area land and improvements on that land not included in individual property assessments. ( )

**02. Secondary Category 26 - Residential Condominiums.** Land and improvements included in individual assessments of condominiums or townhouses and used for residential purposes. ( )

**03. Secondary Category 27 - Commercial or Industrial Condominiums.** Land and improvements included in individual assessments of condominiums and used for commercial or industrial purposes. ( )

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**04. Secondary Category 30 - Improvements.** Improvements, other than residential, located on secondary category 20. ( )

**05. Secondary Category 31 - Improvements.** Improvements used for residential purposes and located on secondary category 10. ( )

**06. Secondary Category 32 - Improvements.** Improvements, other than residential, located on secondary categories 1 through 12 and 15. ( )

**07. Secondary Category 33 - Improvements.** Improvements used in conjunction with recreation but not associated with homesites and located on secondary category 11. ( )

**08. Secondary Category 34 - Improvements.** Improvements used for residential purposes and located on secondary category 12. ( )

**09. Secondary Category 35 - Improvements.** Improvements used for commercial purposes and located on secondary category 13. ( )

**10. Secondary Category 36 - Improvements.** Improvements used for industrial purposes and located on secondary category 14. ( )

**11. Secondary Category 37 - Improvements.** Improvements used for residential purposes and located on secondary category 15. ( )

**12. Secondary Category 38 - Improvements.** Improvements used for commercial purposes and located on secondary category 16. ( )

**13. Secondary Category 39 - Improvements.** Improvements used for industrial purposes and located on secondary category 17. ( )

**14. Secondary Category 40 - Improvements.** Improvements located on secondary category 18. ( )

**15. Secondary Category 41 - Improvements.** Improvements used for residential purposes and located on secondary category 20. ( )

**16. Secondary Category 42 - Improvements.** Improvements used for commercial purposes and located on secondary category 21. ( )

**17. Secondary Category 43 - Improvements.** Improvements used for industrial purposes and located on secondary category 22. ( )

**18. Secondary Category 44 - Improvements.** Taxable improvements located on otherwise exempt property under the same ownership. No later than January 1, 2008, county assessors will use the appropriate land and improvement secondary categories based on use. ( )

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**19. Secondary Category 45 - Utility System Land and Improvements.** Locally assessed land and improvements used as utility systems and not under the jurisdiction of the State Tax Commission for appraisal. ( )

**20. Secondary Category 46 - Manufactured Housing.** Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare as real property has been filed but becomes effective the following year. ( )

**21. Secondary Category 47 - Improvements to Manufactured Housing.** Additions not typically moved with manufactured housing. ( )

**22. Secondary Category 48 - Manufactured Housing.** Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. ( )

**23. Secondary Category 49 - Manufactured Housing.** Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. ( )

**24. Secondary Category 50 - Residential Improvements on Leased Land.** Improvements used for residential purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land under separate ownership, or any other land under different ownership than the improvements. No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for residential purposes and discontinue use of secondary categories 60, 61, and 62. ( )

**25. Secondary Category 51 - Commercial or Industrial Improvements on Leased Land.** Improvements used for commercial or industrial purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land under separate ownership, or any other land under different ownership than the improvements. No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for commercial or industrial purposes and discontinue use of secondary categories 60, 61, and 62. ( )

**26. Secondary Category 57 - Equities in Land With Improvements Purchased From the State.** Land with the improvements on that land that are purchased from the state under contract. ( )

**27. Secondary Category 60 - Improvements on Railroad Rights-of-Way.** Improvements located on railroad rights-of-way under separate ownership. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes. ( )

**28. Secondary Category 61 - Improvements by Lessee Other Than Secondary**

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**Category 62.** Improvements made by the tenant or lessee to landlord's property. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes. ( )

**29. Secondary Category 62 - Improvements on Exempt or Public Land.** Taxable improvements, owned separately from exempt or public land on which they are located. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes. ( )

**30. Secondary Category 65 - Manufactured Housing.** Manufactured housing not designated real property and located on exempt, rented or leased land under separate ownership. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. ( )

**31. Secondary Category 69 - Recreational Vehicles.** Unlicensed recreational vehicles. ( )

**32. Secondary Category 81 - Exempt Improvements.** Category 81 is for county use to keep an inventory of exempt improvements. ( )

**33. Cross Reference.** For descriptions of secondary categories used to list land values, see Rule 510 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ( )

## **512. SECONDARY CATEGORIES, OTHER THAN LAND OR IMPROVEMENTS - LISTING AND REPORTING (RULE 512).**

Section 63-509, Idaho Code. County assessors will use the following secondary categories to list property values, other than that for land or improvements, on assessment notices under Sections 63-301 and 63-308, Idaho Code, and will use these secondary categories to report values for property, other than land or improvements, to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. ( )

**01. Secondary Category 54 - Utility System Personal Property.** Personal property that is part of locally assessed utility systems not under the jurisdiction of the State Tax Commission for appraisal. ( )

**02. Secondary Category 55 - Boats or Aircraft.** Unlicensed watercraft or unregistered aircraft. ( )

**03. Secondary Category 56 - Construction Machinery, Tools, and Equipment.** Unlicensed equipment such as cranes, tractors, scrapers, and rock crushers, used in the building trade or road construction. ( )

**04. Secondary Category 57 - Equities in Personal Property Purchased From the**



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State. Personal property purchased from the state under contract. ( )

**05. Secondary Category 59 - Furniture, Fixtures, Libraries, Art, and Coin Collections.** Trade articles used commercially for convenience, decoration, service, storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease. ( )

**06. Secondary Category 63 - Logging Machinery, Tools, and Equipment.** Unlicensed logging machinery, shop tools, and equipment not assessed as real property. ( )

**07. Secondary Category 64 - Mining Machinery, Tools, and Equipment.** Unlicensed mining machinery, shop tools, and equipment not assessed as real property. ( )

**08. Secondary Category 66 - Net Profits of Mines.** That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses. See Section 63-2802, Idaho Code, and Rule 982 of these rules. ( )

**09. Secondary Category 67 - Operating Property.** Property assessed and apportioned by the State Tax Commission. ( )

**10. Secondary Category 68 - Other Miscellaneous Machinery, Tools, and Equipment.** Unlicensed machinery, tools, and equipment not used in construction, logging, mining, or not used exclusively in agriculture. ( )

**11. Secondary Category 70 - Reservations and Easements.** Reservations, including mineral rights reserved, divide ownership of property rights. Easements convey use but not ownership. ( )

**12. Secondary Category 71 - Signs and Signboards.** Signs and signboards, their bases and supports. ( )

**13. Secondary Category 72 - Tanks, Cylinders, Vessels. Containers.** ( )

**14. Secondary Category 81 - Exempt Property, Other Than Land or Improvements.** Category 81 is for county use to keep an inventory of exempt property other than land or improvements. ( )

**15. Cross Reference.** For descriptions of secondary categories used to list land values on the valuation assessment notice or report land values on the abstracts, see Rule 510 of these rules or used to list values for improvements on the valuation assessment notice or report improvement values on the abstracts, see Rule 511 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ( )

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## **(BREAK IN CONTINUITY OF SECTIONS)**

### **613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (RULE 613).**

Section 63-602K, Idaho Code. (4-6-05)

#### **01. Definitions.** (4-5-00)

**a.** Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (4-5-00)

**b.** Speculative Portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. (4-5-00)

**c.** Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. (4-5-00)

**d.** Net Income. Net income is determined by deducting the landlord's share of current expenses from economic rent per acre. (4-5-00)

#### **02. Calculation of Net Income from Cash Rent.** Net Income from cash rent is calculated in the following manner. (4-5-00)

**a.** Crops Grown. Determine the crops typically grown in the area. (4-5-00)

**b.** Economic Rent. Determine the average per acre gross income from individual crop rents typical to the area over the immediate past five (5) years. (4-5-00)

**c.** Landlord's Expenses. Determine the landlord's share of typical contracted expenses paid in the immediately preceding growing season. (4-5-00)

**d.** Landlord's Net Income. Subtract the landlord's share of typical contracted expenses from the average gross income per acre for the immediately preceding growing season to determine net income. (4-5-00)

#### **03. Calculation of Net Income from Crop Share Rent.** Net income from crop share rent is calculated in the following manner. (4-5-00)

**a.** Crops Grown. Determine the crops typically grown in the area. (4-5-00)

**b.** Average Crop Production. Determine average crop production per acre based on the most recent five (5) years. (4-5-00)

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c. Average Commodity Prices. Determine average commodity prices based on the most recent five (5) years. (4-5-00)

d. Gross Income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. (4-5-00)

e. Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the area. (4-5-00)

f. Expenses. Determine the landlord's share of water, fertilizer, chemical, seed and harvest cost per acre for the immediately preceding growing season. (4-5-00)

g. Net Income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. (4-5-00)

**04. Determination of Five Year Average Crop Prices.** The State Tax Commission shall determine five (5) year average crop prices to be used in determining net income by surveying publicly available data from various sources, including the annual crop summary published by the Idaho Agricultural Statistics Service. Average crop prices determined in this manner by the State Tax Commission should be considered guidelines subject to modification based on local market data. (4-6-05)

~~**05. Examples of Calculation of Taxable Value of Agricultural Land.** The following examples show calculations for the taxable value of agricultural land. Example in Paragraph 613.05.a. shows one calculation of capitalization rate (cap rate), example in Paragraph 613.05.b. shows calculations using cash rent agreements and example in Paragraph 613.05.c. shows calculations using crop share agreements. (4-6-05)~~

~~a. Capitalization rate calculation example:~~

<del>TAX CODE AREAS</del>	<del>PROPERTY TAX RATES</del>
<del>8</del>	<del>1.1323951%</del>
<del>9</del>	<del>1.1186222%</del>
<del>10</del>	<del>1.1226782%</del>
<del>11</del>	<del>1.1714841%</del>
<del>12</del>	<del>1.1674300%</del>
<del>13</del>	<del>1.0692041%</del>
<del>15</del>	<del>1.1603100%</del>
<del>16</del>	<del>1.1323951%</del>
<del>17</del>	<del>1.1323951%</del>

~~AVERAGE = 1.13%~~

~~FARM CREDIT SYSTEM INTEREST RATE = 8.22%~~

~~TOTAL CAPITALIZATION RATE (CAP RATE) = 9.35%~~

~~(4-6-05)~~

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*b. Cash-rent agreement calculation example:*

CROPS	CONTRACT RENTS PER ACRE	ROTATION- IN PERCENT	WEIGHTED INCOME- PER ACRE
Barley	\$100.00	14.42%	\$ 14.42
Beans	\$100.00	22.46%	\$ 22.46
Beets	\$170.00	20.33%	\$ 34.56
Corn/Grain	\$100.00	0.00%	\$ 0.00
Corn/Silage	\$110.00	0.00%	\$ 0.00
Hay/Alfalfa	\$120.00	21.32%	\$ 25.58
Potatoes	\$200.00	0.00%	\$ 0.00
Wheat	\$100.00	21.48%	\$ 21.48
Peas	\$125.00	0.00%	\$ 0.00
Oats	\$110.00	0.00%	\$ 0.00
TOTAL INCOME PER ACRE			\$118.50

*Value per acre equals net income per acre divided by CAP rate:*

TOTAL INCOME PER ACRE	\$118.50
LESS WATER COSTS	\$ 23.00
LESS MANAGEMENT(@ 5%)	\$ 5.93
NET INCOME PER ACRE	\$ 89.57
CAP RATE	9.35%
VALUE PER ACRE	\$958

(4-6-05)

*e. Crop share agreement calculation example:*

Crop	Yield	Price	Gross Income	Landlord Share	Landlord- Share- Gross- Income	Rotation Percent	Per-Acre Share-of- Gross Inc.
Barley	100.00	\$ 2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.74
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.46
G/Corn	0.00	\$ 3.22	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
S/Corn	0.00	\$24.40	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.31

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<i>Crop</i>	<i>Yield</i>	<i>Price</i>	<i>Gross Income</i>	<i>Landlord Share</i>	<i>Landlord Share-Gross Income</i>	<i>Rotation Percent</i>	<i>Per Acre Share of Gross Inc.</i>
<i>Potatoes</i>	<i>-0.00</i>	<i>\$ 4.74</i>	<i>\$ 0.00</i>	<i>25.00%</i>	<i>\$ 0.00</i>	<i>-0.00%</i>	<i>\$ 0.00</i>
<i>Wheat</i>	<i>-98.00</i>	<i>\$ 3.73</i>	<i>\$365.54</i>	<i>33.33%</i>	<i>\$121.83</i>	<i>21.48%</i>	<i>\$26.17</i>
<i>Peas</i>	<i>-0.00</i>	<i>\$ 8.68</i>	<i>\$ 0.00</i>	<i>33.33%</i>	<i>\$ 0.00</i>	<i>-0.00%</i>	<i>\$ 0.00</i>
<i>Oats</i>	<i>-0.00</i>	<i>\$ 1.66</i>	<i>\$ 0.00</i>	<i>33.33%</i>	<i>\$ 0.00</i>	<i>-0.00%</i>	<i>\$ 0.00</i>
TOTAL INCOME PER ACRE						<i>100.00%</i>	<i>\$167.28</i>

*Value per acre equals net income per acre divided by CAP rate:*

<i>Total Income Per Acre \$167.25</i>	<i>Expenses</i>
	<i>Water = \$23.00</i>
	<i>Fertilizer = \$14.77</i>
	<i>Chemicals = \$9.04</i>
	<i>Seed = \$2.05</i>
	<i>Management = \$8.36</i>
	<i>Harvest = \$14.67</i>
<i>TOTAL EXPENSE PER ACRE =</i>	<i>\$71.89</i>
<i>NET INCOME =</i>	<i>\$95.39</i>
<i>CAP RATE =</i>	<i>9.35%</i>
<i>VALUE PER ACRE =</i>	<i>\$1,020</i>

(4-6-05)

**05. Farm Credit System Interest Rate.** Annually, the State Tax Commission shall calculate the five (5) year rolling average Farm Credit System interest rate (FCSIR). Using the twenty (20) year fixed rate interest rates received bi-monthly from Northwest Farm Credit Services in Spokane, Washington, calculate the average Farm Credit System interest rate for the prior year applying the formula in Paragraph 613.05.a. of this rule. Calculate the five (5) year rolling average Farm Credit System interest rate applying the formula in Paragraph 613.05.b. of this rule. ( )

**a.** Formula for Calculating Average Farm Credit System Interest Rate for Prior Year.  

$$FCSIR_5 = (R_1 + R_2 + R_3 + R_4 + R_5 + R_6 + R_7 + R_8 + R_9 + R_{10} + R_{11} + R_{12}) / 12.$$

$FCSIR_5$	is the average Farm Credit System interest rate for the prior year.
$R_1$	is the interest rate received for January of the prior year.

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$R_2$	is the interest rate received for February of the prior year.
$R_3$	is the interest rate received for March of the prior year.
$R_4$	is the interest rate received for April of the prior year.
$R_5$	is the interest rate received for May of the prior year.
$R_6$	is the interest rate received for June of the prior year.
$R_7$	is the interest rate received for July of the prior year.
$R_8$	is the interest rate received for August of the prior year.
$R_9$	is the interest rate received for September of the prior year.
$R_{10}$	is the interest rate received for October of the prior year.
$R_{11}$	is the interest rate received for November of the prior year.
$R_{12}$	is the interest rate received for December of the prior year.

( )

b. Formula for Calculating Five (5) Year Rolling Average Farm Credit System Interest Rate.  $FCSIR = (FCSIR_1 + FCSIR_2 + FCSIR_3 + FCSIR_4 + FCSIR_5)/5$ .

$FCSIR_5$	is the average Farm Credit System interest rate for the prior year.
$FCSIR_4$	is the average Farm Credit System interest rate for two (2) years ago.
$FCSIR_3$	is the average Farm Credit System interest rate for three (3) years ago.
$FCSIR_2$	is the average Farm Credit System interest rate for four (4) years ago.
$FCSIR_1$	is the average Farm Credit System interest rate for five (5) years ago.

( )

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~~06. Cross Reference. See Rule 645 of these rules.~~ (4-6-05)

~~076.~~ **Notification.** In addition to providing notification of the Farm Credit System interest rate, the State Tax Commission will annually notify each county assessor of the most recent five (5) year average crop prices for the state. (4-6-05)

**07. Cross Reference.** For agricultural land taxable value calculation examples, see Rule 614 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. ( )

### **614. ~~VALUATION OF CHRISTMAS TREE FARMS~~ SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND - EXAMPLES (RULE 614).**

~~Christmas tree farms shall be categorized on the tax rolls under the applicable agricultural category. Section 63-1708, Idaho Code, shall only apply to Christmas trees harvested from designated lands.~~ Sections 63-602K and 63-604, Idaho Code. The following examples show calculations for the taxable value of agricultural land. The example in Subsection 614.01 of this rule shows one (1) calculation of an average property tax rate, the example in Subsection 614.02 of this rule shows one (1) calculation of a capitalization rate (cap rate), the example in Subsection 614.03 of this rule shows calculations using cash rent agreements, and the example in Subsection 614.04 of this rule shows calculations using crop share agreements. (7-1-97)( )

#### **01. Average Property Tax Rate Calculation Example.**

	TAX CODE AREAS	PROPERTY TAX RATES
	<u>8</u>	<u>1.1323951%</u>
	<u>9</u>	<u>1.1186222%</u>
	<u>10</u>	<u>1.1226782%</u>
	<u>11</u>	<u>1.1714841%</u>
	<u>12</u>	<u>1.1674300%</u>
	<u>13</u>	<u>1.0692041%</u>
	<u>15</u>	<u>1.1603100%</u>
	<u>16</u>	<u>1.1323951%</u>
	<u>17</u>	<u>1.1323951%</u>
AVERAGE PROPERTY TAX RATE		1.1341015%

( )

#### **02. Capitalization Rate Calculation Example.**

AVERAGE PROPERTY TAX RATE	1.13%
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5-YEAR AVERAGE FARM CREDIT BANK INTEREST RATE	8.22%
TOTAL CAPITALIZATION RATE (CAP RATE)	9.35%

( )

### 03. Cash Rent Agreement Calculation Example.

CROPS	CONTRACT RENTS PER ACRE	ROTATION IN PERCENT	WEIGHTED INCOME PER ACRE
Barley	\$100.00	14.42%	\$ 14.42
Beans	\$100.00	22.46%	\$ 22.46
Beets	\$170.00	20.33%	\$ 34.56
Corn/Grain	\$100.00	0.00%	\$ 0.00
Corn/Silage	\$110.00	0.00%	\$ 0.00
Hay/Alfalfa	\$120.00	21.32%	\$ 25.58
Potatoes	\$200.00	0.00%	\$ 0.00
Wheat	\$100.00	21.48%	\$ 21.48
Peas	\$125.00	0.00%	\$ 0.00
Oats	\$110.00	0.00%	\$ 0.00
TOTAL INCOME PER ACRE			\$118.50

Value per acre equals net income per acre divided by CAP rate:

TOTAL INCOME PER ACRE	\$118.50
LESS WATER COSTS	\$ 23.00
LESS MANAGEMENT(@ 5%)	\$ 5.93
NET INCOME PER ACRE	\$ 88.57
CAP RATE	9.35%
VALUE PER ACRE	\$958

( )

### 04. Crop Share Agreement Calculation Example:

Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income	Rotation Percent	Per Acre Share of Gross Inc.
Barley	100.00	\$ 2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.74
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.46



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Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income	Rotation Percent	Per Acre Share of Gross Inc.
G/Corn	0.00	\$ 3.22	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
S/Corn	0.00	\$24.40	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.31
Potatoes	0.00	\$ 4.74	\$ 0.00	25.00%	\$ 0.00	0.00%	\$ 0.00
Wheat	98.00	\$ 3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.17
Peas	0.00	\$ 8.68	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Oats	0.00	\$ 1.66	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
TOTAL INCOME PER ACRE						100.00%	\$167.28

Value per acre equals net income per acre divided by CAP rate:

Total Income Per Acre \$167.28		Expenses
Water	=	\$ 23.00
Fertilizer	=	\$ 14.77
Chemicals	=	\$ 9.04
Seed	=	\$ 2.05
Management	=	\$ 8.36
Harvest	=	\$ 14.67
TOTAL EXPENSE PER ACRE	=	\$ 71.89
NET INCOME	=	\$ 95.39
CAP RATE	=	9.35%
VALUE PER ACRE	=	\$1,020

( )

**05. Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. ( )

## 615. PROPERTY EXEMPT FROM TAXATION - CERTAIN INTANGIBLE PERSONAL PROPERTY (RULE 615).

Section 63-602L, Idaho Code. ( )

**01. Definitions.** The following definitions apply to the exemption for certain intangible personal property. (1-1-99)

- a. Contracts and contract rights. Contracts and contract rights are enforceable

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agreements, which establish mutual rights and responsibilities, and rights created under such agreements. Contracts and contract rights do not include tax credits received by low-income housing properties under Section 42 of the Internal Revenue Code. ~~(1-1-99)~~( )

**b.** Copyrights. Copyrights are rights granted to the author or originator of literary or artistic productions, by which he or she is invested with the sole and exclusive privilege of making, publishing or selling copies for a specified time. (1-1-99)

**c.** Custom computer programs. Custom computer programs means those programs defined in Section 63-3616, Idaho Code. (1-1-99)

**d.** Customer lists. Customer lists are proprietary lists containing information about a business enterprise's customers. (1-1-99)

**e.** Franchises. Franchises are special privileges. (1-1-99)

**f.** Goodwill. Goodwill is the expectation of continued public patronage of a business. Goodwill is the ability of a business to generate income in excess of a normal rate due to such things as superior managerial skills, superior market position, favorable community and customer reputation and high employee morale. (1-1-99)

**g.** Licenses. Licenses are permissions to do acts, which are not allowed without such permissions. (1-1-99)

**h.** Method A. Method A is the method by which the value of exempt intangible personal property is excluded from the value of operating property by subtracting the market value of exempt intangible personal property from the market value of the operating property at the system level. (1-1-99)

**i.** Method B. Method B is the method by which the value of exempt intangible personal property is excluded from the value of operating property by subtracting the market value of exempt intangible personal property from the market value of the operating property at the state level. (1-1-99)

**j.** Method C. Method C is the method by which the value of exempt intangible personal property is excluded from the value of operating property by using valuation models which value only the nonexempt assets. (1-1-99)

**k.** Patents. Patents are grants from the government conveying and securing the exclusive right to make, use and sell inventions. (1-1-99)

**l.** Rights-of-way which are possessory only and not accompanied by title. Rights-of-way, which are possessory only and not accompanied by title, are easements by which grantees acquire only the rights to pass over or to access for installation or maintenance, without acquiring exclusive use of the rights-of-way. (1-1-99)

**m.** Trademarks. Trademarks are marks of authenticity, through which products of particular manufacturers or vendible commodities of particular merchants may be distinguished

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from those of others. (1-1-99)

**n.** Trade secrets. Trade secrets are formulas, patterns, compilations, programs, devices, methods, techniques or processes, deriving independent economic values from not being generally known by other persons who can obtain economic values from disclosure or use. Trade secrets are the subjects of efforts that are reasonable to maintain secrecy. (1-1-99)

**02. Tangible Property Value Not Affected by Intangible Personal Property Value.** The values of the exempt intangible personal properties shall not affect the values of any tangible properties or the value of the attributes of any tangible properties, regardless of the role of the intangible personal properties in the use of the tangible properties. The exempt values shall not include any values attributable to availability of a skilled work force, condition of surrounding property, geographic features, location, rights-of-way, accompanied by title, view, zoning, and attributes or characteristics of real properties. (1-1-99)

**03. Operating Property Election, Reporting and Methods.** The following apply to operating property for the identification of valuation methods to be used by the State Tax Commission, election of Method A, Method B or Method C by the property owners, reporting by owners and valuation using Method C. (1-1-99)

**a.** Identification of valuation methods. When the State Tax Commission mails the blank Operators' Statements to the property owners, the State Tax Commission shall identify proposed changes in valuation methods compared to those relied on in the prior year. (1-1-99)

**b.** Election default. In the event of default of the taxpayer to make an election, the State Tax Commission shall use the method proposed in the notice accompanying the Operator's Statement. (1-1-99)

**c.** Election of exclusion method. When submitting the Operator's Statement, the owner has the right to elect the method for exclusion of the values of the exempt intangible personal properties from the operating property value. (1-1-99)

**d.** Amending Election. An owner may amend the elected method if written notice is received at least seven (7) business days prior to a hearing under Rule 407 of these rules. (1-1-99)

**e.** Reporting. The State Tax Commission shall consider the value and supporting data provided by the owners. If no supporting intangibles valuation information is provided by the owners, known exempt intangible personal property will be subtracted or will not be impounded in the value. (1-1-99)

**f.** Valuation using Method C. When the owner elects Method C, the State Tax Commission shall give primary consideration to the cost less depreciation model, without regulatory adjustment, in valuing tangible personal property and nonexempt intangible personal property. Only if this model fails to produce market value of the tangible personal property and nonexempt intangible personal property, shall the State Tax Commission consider other appropriate valuation models. (1-1-99)

**04. Personal Property Reporting for Locally Assessed Property.** The exemption for

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custom software, contracts and contract rights shall be claimed by scheduling such property on the owner's personal property declaration form. (1-1-99)

**05. Cross Reference.** For clarification of contracts and contracts rights, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). (\_\_\_\_)

### (BREAK IN CONTINUITY OF SECTIONS)

~~630.—634. (RESERVED).~~

~~635. PARTIAL EXEMPTION FOR PARCELS OF LAND IN A RURAL HOMESITE DEVELOPMENT PLAT (RULE 635).~~

~~Section 63-602FF, Idaho Code. (5-3-03)~~

~~01. Definitions. For the purpose of implementing the partial exemption under Section 63-602FF, Idaho Code, beginning with assessments for 2002, the following terms are defined. (5-3-03)~~

~~a. "Speculative Homesite Exemption." "Speculative homesite exemption" means an exemption granted under Section 63-602FF, Idaho Code. (5-3-03)~~

~~b. "Previously Eligible." Parcels of land in a rural homesite development plat are "previously eligible" for the exemption provided in Section 63-602K, Idaho Code, provided the land was eligible for an exemption on the speculative portion of value of agricultural land at any time since the enactment of that exemption in 1981. (4-6-05)~~

~~c. "Improvements are Being Built." "Improvements are being built" or "construction of the improvements has begun" means construction of any structure has commenced or is observable on the land. Construction of improvements does not include construction of any fences or "associated site improvements", as defined in Rule 645 of these rules. (5-3-03)~~

~~02. Qualifying Criteria for the Speculative Homesite Exemption. To qualify for the speculative homesite exemption, any parcel of land must meet each of the following criteria. (5-3-03)~~

~~a. The county where the parcel of land is located is less than one hundred thousand (100,000) in population. (5-3-03)~~

~~b. The parcel of land is in a recorded subdivision plat. (5-3-03)~~

~~c. The parcel of land is rural; that is, not within the boundaries of an incorporated city. (5-3-03)~~

~~d. The parcel of land was "previously eligible" for the speculative agricultural value~~

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~~exemption under Section 63-602K, Idaho Code. (5-3-03)~~

~~e. The parcel of land is not eligible for the speculative agricultural value exemption under Section 63-602K, Idaho Code, for the current year's assessment. (5-3-03)~~

~~f. No improvements, as defined in Paragraph 635.01.e., of this rule are being or have been built upon the parcel of land. (4-6-05)~~

~~**03. Nonqualifying Parcels in Subdivisions. (5-3-03)**~~

~~a. Any parcel never eligible for the exemption provided in Section 63-602K, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)~~

~~b. Any rural subdivision parcel designated as timberland under Chapter 17, Title 63, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)~~

~~**04. Calculation of Taxable Value of Land Eligible for the Speculative Homesite Exemption.** The taxable value of land eligible for the speculative homesite exemption shall be calculated based on the prior use qualifying the parcel for the exemption provided in Section 63-602K, Idaho Code; that is, the taxable value per acre of this land shall be equal to the taxable value per acre of qualifying agricultural land in the same use as this land when it previously qualified for the speculative agricultural value exemption. Any additional value for the "associated site improvements," as defined in Rule 645 of these rules, is part of the value exempt under the speculative homesite exemption and is not included in the taxable value of the land as calculated pursuant to Section 63-602K, Idaho Code. (5-3-03)~~

~~**05. Use of Category.** The county assessor shall use the category identified in Rule 130 of these rules for all parcels of land qualifying for the speculative homesite exemption. (5-3-03)~~

~~**06. Report of Exempt Value.** As provided in Rule 509 of these rules, the county auditor shall report to the State Tax Commission the total exempt value of all parcels of land qualifying for the speculative homesite exemption. (5-3-03)~~

~~**07. Removal of the Speculative Homesite Exemption. (5-3-03)**~~

~~a. The year following the year in which the population of a county exceeds one hundred thousand (100,000), the speculative homesite exemption shall be removed from any parcels of land previously qualifying for the speculative homesite exemption in that county. Population shall be determined from the most current census or estimate available from the Bureau of the Census as of January 1 of each year. (5-3-03)~~

~~b. The year following the year in which any parcel is annexed into an incorporated city or is incorporated into a newly incorporating city, the speculative homesite exemption shall be removed from that parcel. (5-3-03)~~

~~c. The speculative homesite exemption shall be removed from any parcel of land when "improvements are being built". The speculative homesite exemption must not be removed until "improvements are being built" upon the parcel, even if, the ownership of a parcel of land~~

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*has been transferred.*

*(5-3-03)*

**6365. -- 644. (RESERVED).**

## **(BREAK IN CONTINUITY OF SECTIONS)**

### **645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED (RULE 645).**

Section 63-604, Idaho Code.

(3-15-02)

**01. Definitions.** The following definitions apply for the implementation of the exemption for the speculative value portion of agricultural land. (7-1-99)

**a. Homesite.** The “homesite” is that portion of land, contiguous with but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes. (7-1-99)

**b. Associated Site Improvements.** The “associated site improvements” include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)

**c. Nursery Stock.** Nursery stock is defined in Section 22-2302, Idaho Code. (3-15-02)

**d. Land Used to Produce Nursery Stock.** “Land used to produce nursery stock” means land used by an agricultural enterprise to promote or support the promotion of nursery stock growth or propagation, not land devoted primarily to selling nursery stock or related products. This term also includes land under any container used to grow or propagate nursery stock. This term does not include land used for parking lots or for buildings sites used primarily to sell nursery stock or related items or any areas not primarily used for the nurturing, growth or propagation of nursery stock. (3-15-02)

**e. Speculative Value Exemption.** The “speculative value exemption” is the exemption allowed on land actively devoted to agriculture. (7-1-99)

**02. Homesite Assessment.** Effective January 1, 1999, each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year. (7-1-99)

**a. Accepted Assessment Procedures.** Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states. (7-1-99)

**b. Appropriate Market and Comparable Selection.** The appropriate market is the

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market most similar to the homesite and improvements, located on the homesite. In applying the sales comparison approach, the appraiser should select comparables having actual or potential residential use. (7-1-99)

c. Assigning Category. The value of the homesite will be listed in Category 10. (7-1-99)

d. Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. (7-1-99)

**03. Valuing Land, Excluding the Homesite.** The assessor shall value land, excluding the homesite, on the following basis: (5-3-03)

a. Land Used for Personal Use or Pleasure. Any land, regardless of size, utilized for the grazing of animals kept primarily for personal use or pleasure and not a portion of a for profit enterprise, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule and shall not qualify for the speculative value exemption. (4-11-06)

b. Land in a Subdivision. Land in a subdivision with restrictions prohibiting agricultural use shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule and shall not qualify for the speculative value exemption but may qualify for the exemption under Section 63-602FF, Idaho Code. Land meeting the use qualifications identified in Section 63-604, Idaho Code, and in a subdivision without restrictions prohibiting agricultural use shall be valued as land actively devoted to agriculture using the same procedures as used for valuing land actively devoted to agriculture and not located in a subdivision. (4-11-06)

c. Land, Five (5) Contiguous Acres or Less. Land of five (5) contiguous acres or less shall be presumed nonagricultural, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule, and shall not qualify for the speculative value exemption. If the owner produces evidence that each contiguous holding of land under the same ownership has been devoted to agricultural use for the last three (3) growing seasons and it agriculturally produced for sale or home consumption fifteen percent (15%) or more of the owner's or lessee's annual gross income or it produced gross revenue in the immediate preceding year of one thousand dollars (\$1,000) or more, the land actively devoted to agriculture, shall qualify for the speculative value exemption. For holdings of five (5) contiguous acres or less income is measured by production of crops, nursery stock, grazing, or net income from sale of livestock. Income shall be estimated from crop prices at harvest or nursery stock prices at time of sale. The use of the land and the income received in the prior year must be certified with the assessor by March 15, each year. (4-11-06)

d. Land, More Than Five (5) Contiguous Acres. Land of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, or grazing, or in a cropland retirement or rotation program, as part of a for profit enterprise, shall qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule. (4-11-06)

**04. Cross Reference.** For definitions and general principles relating to the taxable

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value of land actively devoted to agriculture, see Rule 613 of these rules. For agricultural land taxable value calculation examples, see Rule 614 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules.

( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 717. PROCEDURE AFTER CLAIM APPROVAL (RULE 717).

Sections 63-115 and 63-707, Idaho Code.

( )

**01. Formatting Requirements.** The property tax reduction roll shall be formatted as required by Section 63-707, Idaho Code. (3-30-01)

**02. Preliminary Property Tax Reduction Roll.** The roll, certified by the assessor to the county auditor and the State Tax Commission by the fourth Monday in June, shall be termed the preliminary property tax reduction roll. The preliminary property tax reduction roll shall list property tax reduction claimants in alphabetical order unless the State Tax Commission grants permission for claimants to be listed in an alternate order. Each original claim form shall be submitted to the State Tax Commission in the same order as shown on the preliminary property tax reduction roll. (3-30-01)

**03. Final Property Tax Reduction Roll.** The completed property tax reduction roll, certified by each county clerk to the State Tax Commission by the fourth (4th) Monday in October, shall be termed the final property tax reduction roll. The final property tax reduction roll shall list property tax reduction claimants in the same order as shown on the preliminary property tax reduction roll, except that all fully disapproved claimants shall be deleted and not shown on the final property tax reduction roll. Erroneous claims which are partially disapproved by the State Tax Commission shall be shown on the final property tax reduction roll after the county clerk has made all adjustments or corrections listed on the notice sent to the county auditor pursuant to Section 63-707(6), Idaho Code, termed county change letter. (3-30-01)

**04. Certification of Electronic Property Tax Reduction Roll by County Assessor.** After approval of the claims by the county board of equalization but no later than the fourth Monday in June, each county assessor will certify the property tax reduction roll to the county auditor and send a copy to the State Tax Commission. In addition, each county assessor will also send a copy of this certified roll to the State Tax Commission in a password protected electronic data file formatted as directed or approved by the State Tax Commission. Each county assessor will contact the State Tax Commission to receive a password. This password protected electronic roll will contain the following information: ( )

**a.** Claimant's Social Security Number. List the claimant's social security number. ( )

**b.** Claimant's Date of Birth. List the claimant's date of birth. ( )



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- c.** Claimant's Last Name. List the claimant's last name. ( )
- d.** Claimant's First Name. List the claimant's first name. ( )
- e.** Spouse's Social Security Number. List the social security number for the spouse of the claimant. ( )
- f.** Spouse's Date of Birth. List the date of birth for the spouse of the claimant. ( )
- g.** Spouse's Last Name. List the last name for the spouse of the claimant. ( )
- h.** Spouse's First Name. List the first name for the spouse of the claimant. ( )
- i.** Claimant's Telephone Number. List the claimant's telephone number. ( )
- j.** Claimant's Address. List the claimant's address. ( )
- k.** Claimant's City. List the city where the claimant lives. ( )
- l.** Claimant's State. List the postal abbreviation for the state where the claimant lives. ( )
- m.** Claimant's Zip Code. List the claimant's zip code. ( )
- n.** Claimant's Parcel Number(s). List the parcel number for the property on which the claimant is receiving the homeowner's exemption. When more than one (1) parcel owned by the claimant is eligible, list all eligible parcel numbers. ( )
- o.** Year. List the current year. ( )
- p.** Claimant's County Number. List the number of the county where the claimant lives. ( )
- q.** Term of Direct Address. List the appropriate term of direct address; that is, "Mr.," "Ms.," or "Mr. & Mrs." ( )
- r.** Income Data. List income data. ( )
- s.** Identify New Applicants. Identify claimants who are applying for this benefit for the first time. ( )
- t.** Value. List the best estimate for each secondary category of current market value and prorated net taxable value. ( )
- u.** Maximum Benefit. The program will automatically show the maximum benefit for which the claimant is eligible based on income. ( )
- v.** Qualifying Criteria. Identify all of the following criteria that the claimant meets.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Property Tax Administrative Rules**

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**Docket No. 35-0103-0607**  
**PENDING RULE**

- ( )
- i. Sixty-five (65) or older. ( )
- ii. Blind. ( )
- iii. Disability granted by the Social Security Administration, Railroad Retirement Board, or federal civil service. ( )
- iv. Orphan, under eighteen (18) years of age. ( )
- v. Prisoner of war or hostage, certified by Veteran's Affairs. ( )
- vi. Nonservice connected disability or service connected disability at ten percent (10%) to thirty percent (30%), certified by Veteran's Affairs. ( )
- vii. Service connected disability at forty percent (40%) or more, certified by Veteran's Affairs. ( )
- viii. Widow or widower, include date of spouse's death. ( )

**05. Certification of Completed Electronic Property Tax Reduction Roll by County Auditor.** No later than the fourth Monday in October, each county auditor will certify the property tax reduction roll to the State Tax Commission. In addition, each county auditor will also send a copy of this certified roll to the State Tax Commission in a password protected electronic data file formatted as directed or approved by the State Tax Commission. Each county auditor will contact the State Tax Commission to receive a password. In addition to the data files listed in Paragraphs 717.01.a. through 717.01.v. of this rule, this password protected electronic roll will contain the following information formatted as directed or approved by the State Tax Commission. ( )

**a.** Current Year's Levy. List the current year's levy for the tax code area where each claimant's property is located. ( )

**b.** Current Year's Taxable Value. List the current year's taxable value for each claimant's qualifying property. ( )

**c.** Claimed Property Tax Reduction Amount. List for each claimant the amount of property tax reduction claimed based on the current year's levy and the current year's eligible taxable value. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**801. LIMITATION ON BUDGET REQUESTS -- SPECIAL PLANT FACILITIES FUND LEVY PROVISIONS (RULE 801).**

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION Property Tax Administrative Rules

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PENDING RULE

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Sections 63-802, ~~and~~ 33-804, and 33-909, Idaho Code.

~~(3-15-02)~~( )

**01. Limits on Plant Facilities Funds.** For any school or library district with a plant facilities fund created pursuant to Section 33-804, Idaho Code, the amount of property tax to be budgeted for said fund in any year cannot exceed four tenths of one percent (0.4%) multiplied by the market value for assessment purposes of the taxing district as of December 31 of the year prior to the first year in which a plant facilities fund levy is made. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code.

~~(3-15-02)~~( )

**02. No Additional Plant Facilities Fund Permitted.** Any school or library district with an existing plant facilities fund is not allowed to levy for an additional plant facilities fund in any tax year until the period of the existing plant facilities fund has expired. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code.

~~(3-15-02)~~( )

**03. Plant Facilities Fund Extensions or Increases.** Any school or library district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-804, Idaho Code. For the purpose of such increase, the “total levy for school or library plant facilities and bonded indebtedness” shall be computed as follows.

(3-15-02)

**a.** For the first year in which the increased or extended plant facilities fund levy is to be made, sum of the amount to be levied for the plant facilities fund and for any bond fund in existence prior to the new plant facilities fund.

(3-15-02)

**b.** Divide the sum computed in Subsection 801.03.a. by the district’s actual market value for assessment purposes as of December 31 of the year immediately preceding the year in which the increased or extended plant facilities fund is to be levied.

(3-15-02)

**04. Maximum Amount of Increased Plant Facilities Fund.** When any district increases its plant facilities fund amount to be levied, the maximum amount shall not in any year exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the year immediately preceding the first year the increased fund is to be levied.

(3-15-02)

**05. Special Reporting Requirements for State-authorized Plant Facilities Levy.** When the state Department of Education certifies a state-authorized plant facilities levy to any county under Section 33-909, Idaho Code, the county clerk shall forward a copy of such certification to the State Tax Commission as an attachment to the L-2 Form described in Rule 803 of these rules and submitted for the affected school district.

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**808. -- ~~93501~~. (RESERVED).**

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**902. PROPERTY TAX NOTICE AND RECEIPTS - DUTY OF TAX COLLECTOR (RULE 902).**

Sections 63-704 and 63-902, Idaho Code. The tax notice required to be mailed to taxpayers under Section 63-902, Idaho Code, must include taxpayers whose property taxes are to be paid in full as a result of the property tax reduction approved under Section 63-704, Idaho Code. For these taxpayers, the tax notice shall show the amount to be paid on behalf of the taxpayer and zero taxes owed. ( )

**903. -- 935. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**937. -- ~~944~~38. (RESERVED).**

**939. COURT OR BOARD OF TAX APPEALS ORDERED REFUNDS OR CREDITS - LEVY RESTRICTIONS (RULE 939).**

Section 63-1305, Idaho Code. Section 63-1305, Idaho Code, allows taxing districts to certify and levy a judgment levy for an amount equal to property tax refunds or credits ordered by a court or the board of tax appeals and to include such amount with amounts certified and levied under Sections 63-802 through 63-807, Idaho Code. For each affected taxing district, the decision to certify and levy such amounts is permissive. For any taxing district to use this provision, amounts to be levied must be certified within the two years immediately following the order becoming final. Any amount, not certified and levied within that two-year period, is lost. In the second year following the order, the amount remaining will be lost for any taxing district for which such amount is less than \$100. ( )

**940. -- 944. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**967. -- ~~979~~. (RESERVED).**

**968. CERTAIN CHRISTMAS TREES AND ANNUAL FOREST CROPS - EXEMPT FROM YIELD TAX (RULE 968).**

Sections 63-602K, 63-604, and 63-1708, Idaho Code. ( )

**01. Certain Forest Products Exempt From Yield Tax Under Twenty-Five Dollars.**  
Annual forest crops, including Christmas trees, nuts, berries, foliage, cones, and other forest products harvested for domestic use, are exempt from the forest product yield tax when this tax would be less than twenty-five dollars (\$25.00) and the forest crops are harvested on land designated under Section 63-1703 or 63-1704, Idaho Code. ( )

**02. Categorization of Christmas Tree Farms Land,** complying with the definition

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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of “actively devoted to agriculture” as defined in Section 63-604, Idaho Code, and used to grow Christmas trees and other annual forest crops, shall be identified in the appropriate agricultural secondary category pursuant to the secondary category descriptions in Rule 510 of these rules.

( )

**03. Cross References.** For the descriptions of agricultural secondary categories, see secondary categories 1, 2, 3, 4, and 5 in Rule 510 of these rules. For additional information relating to complying with the “actively devoted to agriculture” criteria, see Rule 645 of these rules. For land valuation information, see Rules 613 and 614 of these rules.

( )

**969. -- 979. (RESERVED).**

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.06 - HOTEL/MOTEL ROOM TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0106-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635, and 63-3039 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 492 and 493.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jim Husted (208) 334-7500.

DATED this 30th day of October, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635, and 63-3039.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Hotel/Motel Room Tax Administrative Rules****Docket No. 35-0106-0601**  
**PENDING RULE**

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must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rules 012 and 015:** To strike references to the 4% Greater Boise Auditorium District tax rate. The rate increases to 5% on October 1, 2006. The history of changes to the Greater Boise Auditorium District tax is also being struck since that information is available elsewhere.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 21<sup>st</sup> day of August, 2006.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**012. ~~RATE AND APPLICATION OF TAX~~ GEOGRAPHICAL BOUNDARIES (RULE 012).**

**~~01. Travel and Convention Tax.~~** *The statewide Travel and Convention tax applies to all sales of hotel or motel rooms or campground spaces to be used by an individual as a place to sleep in the state of Idaho after July 1, 1981, unless the charge for the room or campground space*

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~~is exempted by provisions of law or these rules. The tax is measured by the total taxable gross receipts from the charges for all such rooms or campground spaces during any calendar month and is imposed at the rate of two percent (2%) of such receipts.~~ (7-1-93)

~~**02. Auditorium District Tax.** The Auditorium District tax applies to all hotel or motel rooms located within the geographical boundaries of the Greater Boise Auditorium District furnished for a consideration, unless the charge is exempt by the provisions of law or these rules. The tax rate is set by the Auditorium District Board and is currently imposed at four percent (4%). The previous rates and dates of application are as follows:~~ (7-1-93)

~~**a.** January 1, 1979 through June 30, 1980 = two percent (2%)~~ (7-1-93)

~~**b.** July 1, 1980 through November 30, 1981 = five percent (5%)~~ (7-1-93)

~~**c.** December 1, 1981 through April 30, 1987 = two percent (2%)~~ (7-1-93)

~~**d.** May 1, 1987 to Current = four percent (4%)~~ (7-1-93)

~~**03. Auditorium District Board.** Action by the Auditorium District Board affecting a change in the rate of tax supersedes provisions of these rules.~~ (7-1-93)

~~**04. Geographical Boundaries.** The State Tax Commission and the Boise Auditorium District shall maintain in their respective offices an accurate map of the geographical boundaries of the auditorium district which shall be available for inspection by any person.~~ (7-1-93)( )

### (BREAK IN CONTINUITY OF SECTIONS)

## 015. SEPARATE STATEMENT OF TAX (RULE 015).

**01. Amount of Tax Charged.** The amount of tax charged to the user or occupant of the room or campground may be charged as a rate which is a consolidation of all of the tax rates for state and local taxes which apply to the charge. The amount of tax charged ~~shall~~ may be ~~separately~~ stated on one line of the receipt, invoice or other document provided to the customer. ~~The rate of tax shall be as follows:~~ The consolidated tax amount must include all applicable taxes and be separately stated from all other charges. (7-1-93)( )

~~**a.** In the case of all campgrounds within the state and in the case of all hotels and motels located outside the geographical boundaries of the Greater Boise Auditorium District, the tax shall be two percent (2%) of the total gross receipts from the charges and subject to the tax rounded to the nearest penny.~~ (7-1-93)

~~**b.** In the case of hotels and motels located within the geographical boundaries of the Greater Boise Auditorium District, the tax shall be six percent (6%) of the total gross receipts from room charges subject to the tax rounded to the nearest penny. If the charge is exempt from the Auditorium District tax but subject to the Travel and Convention tax the tax rate shall be two~~



# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Hotel/Motel Room Tax Administrative Rules****Docket No. 35-0106-0601**  
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~~percent (2%) and if the charge is exempt from the Travel and Convention tax but is subject to the Auditorium District tax the tax rate shall be four percent (4%).~~ (7-1-93)

~~e. When the room or campground charge is also subject to the state sales tax, the rate of that tax shall be added to the rate stated above.~~ (7-1-93)

**02. Fractional Parts of One Cent.** If the amount of tax computed in accordance with this rule is a fractional part of one cent (\$.01), the amount shall be rounded to the nearest full cent. (7-1-93)

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.09 - IDAHO KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0109-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 23-1323 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 494 through 499.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jim Husted (208) 334-7500.

DATED this 30th day of October, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 23-1323.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Idaho Kitchen & Table Wine Tax**

**Docket No. 35-0109-0601**  
**PENDING RULE**

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must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

With the enactment of H.B. 454 there will be a new class of wine sellers in Idaho that are allowed to ship wine directly to consumers, effective July 1, 2006:

**Rule 010:** Add a definition of “wine direct shipper.”

**Rule 011:** Amend to explicitly state that wine direct shippers are required by statute to remit wine tax and collect use tax on their sales of wine to Idaho residents.

**Rule 014:** Amend to clarify that wine direct shippers are required to post a surety bond or some other acceptable form of security in the same manner as in-state wineries and wine distributors.

**Rule 015:** Amend to state that wine direct shippers are required to obtain a wine tax reporting number in the same manner as in-state wineries and wine distributors.

**Rule 016:** Amend the rule to state the information required on a wine tax return.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

STATE TAX COMMISSION  
Idaho Kitchen & Table Wine Tax

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PENDING RULE

(208) 334-7544

## THE FOLLOWING IS THE TEXT OF THE PENDING RULE

### 010. DEFINITIONS (RULE 010).

**01. Disposition.** Disposition, for the purpose of these rules, shall mean any diminution, reduction, dispensation, or depletion of wine from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. ~~(7-1-93)~~(\_\_\_\_)

**02. Wine Direct Shipper.** A wine direct shipper is a winery that has been issued a permit by the Idaho State Police to ship wine directly to residents of Idaho. (\_\_\_\_)

### 011. SALES SUBJECT TO WINE TAX (RULE 011).

**01. In General.** Section 23-1319, Idaho Code, imposes an excise tax per gallon basis upon all wine sold or disposed of by a distributor in Idaho. (7-1-93)

**02. Imposition.** All of the terms defined in Section 23-1303, Idaho Code, apply to the assessment of the excise taxes provided in Section 23-1319, Idaho Code. (7-1-93)

**a.** All wine distributors, as defined in Sections 23-1303(d) and (g), Idaho Code, and wine direct shippers as defined in Section 23-1309A, Idaho Code are required to collect and to pay the excise taxes imposed by Section 23-1319, Idaho Code. ~~(7-1-93)~~(\_\_\_\_)

**b.** Any vintner, winery, producer or manufacturer of wine within Idaho shall be considered a wine importer within the meaning of the definitions provided in Sections 23-1303(e) and (h), Idaho Code, for the purpose of administration of the excise tax as imposed by Section 23-1319, Idaho Code. However, to ensure payment of taxes on wine, any entity holding a winery license shall be considered a distributor to the extent of any dispositions from such winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. (7-1-93)

**c.** References to the Act as used in these rules, are to the County Option Kitchen and Table Wine Act, Chapter 13, Title 23, Idaho Code. (7-1-93)

**d.** Ales, strong ~~beer~~ beer, new beer, or any other alcoholic beverages containing a greater percentage of alcohol by weight than specified in Section 23-1002, Idaho Code, shall be taxed as if they were wine, as defined under Chapter 13, Title 23, Idaho Code. ~~(7-1-93)~~(\_\_\_\_)

**e.** Premixed cocktails having an alcoholic content of fourteen percent (14%) or less by volume shall be taxed as wine. (7-1-93)

**03. Every Disposition is a Sale.** Every disposition of wine by a distributor to a retailer or consumer shall constitute a sale of wine for resale or consumption in this state, whether said sale is made within or without this state, and the distributor shall be liable for the payment of taxes

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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on such sales. Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code on all shipments of wine to Idaho residents. Any person making sales or dispositions of wine, whether licensed as a distributor or not, shall be liable for the taxes on such sale or disposition of wine for which no tax under the Act has otherwise been collected. ~~(7-1-93)~~(\_\_\_\_)

**04. All Sales Presumed Taxable.** Every sale or disposition of a distributor's inventory shall be presumed to be a taxable sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 014. SECURITY FOR TAX REQUIRED (RULE 014).

**01. Security for Payment of Tax.** Each person liable for payment of the taxes provided by Chapter 13, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, ~~shall~~ be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

**02. Amount of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly wine tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-98)

**03. Security Requirement Excused.** A distributor, ~~or winery, or wine direct shipper~~ having an average wine tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax ~~will~~ may not be required to furnish security. ~~(7-1-93)~~(\_\_\_\_)

**04. Security for a New Distributor.** When a new distributor, ~~or winery, or wine direct shipper~~ applies for a reporting permit number as required by ~~Idaho Wine Tax Administrative Rule 15 of these rules,~~ security ~~will~~ may be required. ~~(7-1-98)~~(\_\_\_\_)

**a.** If a wine tax reporting history is available from a previous ownership, the security required will be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

**b.** If there is no wine tax reporting history available from a previous ownership of the business, the new distributor, ~~or winery, or wine direct shipper~~ shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted

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accordingly.

~~(7-1-98)~~(\_\_\_\_)

**05. Types of Security.** A person required to post security may, in lieu of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the security required: (7-1-98)

**a.** Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)

**b.** Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)

**c.** Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)

**d.** Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)

**e.** Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)

**06. Petition to Waive Security Deposit.** Other than as provided in Subsection 014.03 of this rule, a security shall be required in all instances, unless the State Tax Commission upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

**07. Taxpayer Petition for Release from Security Requirement.** (7-1-93)

**a.** The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all wine tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all wine tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

**b.** Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION Idaho Kitchen & Table Wine Tax

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date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefore. ~~(7-1-98)~~(\_\_\_\_)

c. If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 014.07.a. of this rule, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

d. In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 014.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and may be immediately reported to the Director of the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (3-15-02)

### 015. WINE TAX REPORTING PERMIT NUMBER (RULE 015).

01. **Permit Number Required.** Every winery located within this state, ~~and~~ every wine distributor, ~~and every wine direct shipper~~ is required to obtain a wine tax reporting permit number before engaging in business. Application forms may be obtained from the State Tax Commission. No fee is required to obtain a wine tax number. ~~(7-1-93)~~(\_\_\_\_)

02. **Permit Number Is Non-Assignable.** A wine tax reporting permit number is nonassignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the State Tax Commission. ~~(7-1-93)~~(\_\_\_\_)

a. The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the State Tax Commission and the new owner or lessee continues operation of the business on the previous owner's wine tax reporting permit number without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. ~~(7-1-93)~~(\_\_\_\_)

### 016. WINE TAX RETURNS AND REPORTS (RULE 016).

01. **Due Date of Reports.** Every person liable for the payment of taxes on wine and every person responsible for making reports to the State Tax Commission shall, on or before the fifteenth (15th) day of each month, file a written report with the State Tax Commission showing

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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all sales of wine for delivery within Idaho during the immediately preceding calendar month. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. (7-1-93)(\_\_\_\_)

**02. Weekend or Holiday Due Date.** For purposes of this rule, if the fifteenth (15th) day of any month shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (7-1-93)

**03. Prescribed Forms.** (7-1-93)

**a.** All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms provided by the Commission. (7-1-93)

**b.** Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

**c.** Out-of-state wineries, vintners, producers or manufacturers of wine shall use importer's reporting forms to report sales to distributors. (7-1-93)

**d.** In-state distributors, wineries, vintners, producers or manufacturers shall use Form ~~W~~-1752 and related forms to report withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by the winery are subject to tax at the time of withdrawal from the winery's inventory. (7-1-93)(\_\_\_\_)

**e.** All persons liable for wine tax must file a wine tax returns provided by the State Tax Commission. The returns must show the relevant information required for computing the amount of tax due, including: (\_\_\_\_)

- i. The name, address, telephone number and permit number of the taxpayer. (\_\_\_\_)
- ii. Beginning and ending inventories. (\_\_\_\_)
- iii. Wine purchases made during the reporting period. (\_\_\_\_)
- iv. Exempt sales and transfers including sales to in-state and out-of-state wholesales and sales to military or liquor dispensaries. (\_\_\_\_)
- v. Purchases and sales of wine in odd size containers. (\_\_\_\_)
- vi. Spoilage. (\_\_\_\_)
- vii. Total taxable gallons. (\_\_\_\_)
- viii. Credits from previous periods, if any. (\_\_\_\_)



# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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viii. Total tax due. ( )

ix. Penalty and interest due, if any. ( )

**04. Requirements of a Valid Return.** A tax return or other documents required to be filed in accordance with Section 23-1322, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and ~~rules thereunder~~ the State Tax Commission Administration and enforcement rules, IDAPA 35.02.01, "Sales and Use Tax Rules."  
(7-1-93)( )

**a.** All wine tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the wine tax return form. (7-1-93)

**b.** All wine tax returns or other documents filed by the taxpayer must include his wine tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

**c.** A wine tax return that does not provide sufficient information to compute a tax liability does not constitute a valid wine tax return. (7-1-93)

**d.** Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required it must be on the proper form, as prescribed by the State Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)( )

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - IDAHO STATE TAX COMMISSION**

### **35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0110-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, 63-2501 and 63-2553, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 500 through 502.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jim Husted (208) 334-7500.

DATED this 30th day of October, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, 63-2501, and 63-2553.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION**  
**Idaho Cigarette & Tobacco Products Tax****Docket No. 35-0110-0601**  
**PENDING RULE**

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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 019:** Subsection 019.01 imposes the duty to pay the tobacco tax on the receiver if the receiver is both a retailer and distributor. This would conflict with Rule 021 if the shipper was also a licensed distributor. The rule is being amended to clarify that this provision applies only to shippers that are not licensed tobacco products distributors.

**Rule 021:** To change the phrase from “incidence of the tax” which can be misinterpreted, to “duty to pay the tax” and strike the words “report or” from subsection 21.03 to be consistent with current administrative practice.

**Rule 022:** To require distributors to obtain a copy of the owners tribal identification card or a certificate of tribal ownership when selling to an enrolled tribal member or an Indian tribe.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 21st day of August, 2006.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

STATE TAX COMMISSION  
Idaho Cigarette & Tobacco Products Tax

Docket No. 35-0110-0601  
PENDING RULE

## THE FOLLOWING IS THE TEXT OF THE PENDING RULE

### 019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).

**01. Shipments to Retailers/Distributors.** In the case where ~~shipments are made~~ a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and ~~subsection ISTC Rule 010 of these rules~~, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax. (7-1-93)(\_\_\_\_)

**02. Nontaxed Tobacco Purchases from Outside the State.** Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed. (7-1-93)

**03. Determining Wholesale Sales Price.** Any time a distributor makes a purchase of tobacco products upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. (7-1-93)

## (BREAK IN CONTINUITY OF SECTIONS)

### 021. SALES TO OTHER IDAHO DISTRIBUTORS (RULE 021).

**01. Sales for Eventual Resale.** When a registered Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state the ~~incidence of duty to pay~~ the tax is on the distributor who first causes the tobacco products to be shipped to Idaho. (4-11-06)(\_\_\_\_)

**02. First Receiver.** The first receiver, the tobacco products distributor who first causes the tobacco products to be shipped to Idaho will report the tax on his tobacco products tax return for the month in which the sales occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax. (4-11-06)

**03. Subsequent Receiver.** Any subsequent receiver will not be required to ~~report or~~ pay the tax as long as he maintains records showing that the first receiver has paid the tax. (4-11-06)(\_\_\_\_)

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**STATE TAX COMMISSION**  
**Idaho Cigarette & Tobacco Products Tax**

**Docket No. 35-0110-0601**  
**PENDING RULE**

## **022. EXEMPTIONS (RULE 022).**

**01. Credit for Taxes Paid.** Tobacco distributors may claim a credit for taxes paid on tobacco products other than cigarettes that are: (7-1-93)

**a.** Sold and delivered to retailers at locations outside the state of Idaho; (5-3-03)

**b.** Sold and delivered to the United States Government on U.S. Military reservations located within Idaho; (7-1-93)

**c.** Sold and delivered to a purchaser within the boundaries of an Idaho Indian reservation when the purchaser is an enrolled member of an Idaho Indian tribe; a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe; or a business enterprise wholly owned and operated by an Idaho Indian tribe. (7-1-93)

**d.** Distributors must maintain adequate records to show the validity of credits claimed under this subsection, including delivery records and invoices. If the distributor is selling to an enrolled member of an Indian tribe he should keep a copy of the purchaser's tribal identification card in his files. If he is selling to a tribally owned entity, he should keep a certificate of tribal ownership or some other form of clear and convincing evidence that the purchaser is a business wholly owned and operated by an Idaho Indian tribe. ( )

**02. Indian Reservations.** Indian reservation means lands which are: (7-1-93)

**a.** Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; established by formal decision of the Executive Branch of the United States; or (7-1-93)

**b.** Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 022.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (7-1-93)

**03. Non-Indian Enterprises.** Tobacco distributors may not claim a credit for taxes paid on tobacco products sold to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation. (7-1-93)

**04. Non-Indian Retailers.** Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell tobacco products upon which tobacco products tax has not been paid. (7-1-93)

# **SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.02.01 - IDAHO TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-0601**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2007 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rules are being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 503 through 508.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Janice Boyd at (208) 334-7530.

DATED this 2nd day of November, 2006.

#### ***THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION****Idaho Tax Commission Administration & Enforcement Rules****Docket No. 35-0201-0601****PENDING RULE**

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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 300:** Amend Administration and Enforcement Rule 300 to remove from the title of the rule Idaho Code section 63-3044 since it is no longer applicable due to a 2006 legislative change in House Bill 443. Clarify that subsection 01 is addressing an assessment when a return is filed.

**Rule 310:** Idaho Code section 63-3045 establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. Amend Administration and Enforcement Rule 310 to add the interest rate for calendar year 2007.

**Rule 430:** Amend Administration and Enforcement Rule 430 to correct the calculation of penalties when a taxpayer qualifies for an extended due date, but files the return before such date. This is consistent with changes to Idaho Code section 63-3033 by House Bill 471, which was passed by the 2006 Legislature.

**Rule 500:** Amend Administration and Enforcement Rule 500 to delete the requirement that an offer of compromise include a remittance in the amount of the offer.

**Rule 704:** Amend Administration and Enforcement Rule 704 to add references to Idaho Code section 63-3077D to the rule with regard to exchanges of information with the Internal Revenue Service and the Financial Management Services of the U.S. Department of the Treasury. This is consistent with 2006 legislative changes in House Bill 473. Modify the title of the rule to include Idaho Code Section 63-3077D and another missing code section referenced in the rule.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Janice Boyd (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

**STATE TAX COMMISSION**

**Idaho Tax Commission Administration & Enforcement Rules**

**Docket No. 35-0201-0601**

**PENDING RULE**

DATED this 21st day of August, 2006.

Janice Boyd  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

## ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

### **300. ASSESSMENT OF TAX (RULE 300).**

Sections ~~63-3044~~, 63-3045, and 63-3045A, Idaho Code.

~~(3-20-97)~~(\_\_\_\_)

**01. In General.** When a tax return is filed, ~~Tax is~~ and interest are assessed on the date ~~a tax~~ the return showing tax owing is ~~filed~~ received, even if the return is corrected by the Tax Commission for mathematical errors. If the taxpayer does not compute a tax on an otherwise properly filed return, any tax calculated by the Tax Commission to be owed is assessed the date payment was due.

~~(3-20-97)~~(\_\_\_\_)

**02. Deficiency of Tax.** If the Tax Commission determines a deficiency of tax, the additional tax is assessed when the deficiency determination becomes final. A deficiency determination becomes final when the taxpayer fails to timely petition for redetermination of the deficiency or to timely appeal the decision of the Tax Commission. If the taxpayer timely appeals the decision of the Tax Commission, the deficiency determination becomes final when the decision of the Board of Tax Appeals, or the judgment of the court, becomes final and can no longer be appealed.

(3-20-97)

**03. The Record of Assessment.** The record of assessment shall be the Notice and Demand for payment of taxes that also functions as the required notice for the distraint and sale of a taxpayer's personal property pursuant to Section 63-3057, Idaho Code. For a jeopardy assessment as provided for in Sections 63-3065, 63-3630, and 63-4208, Idaho Code, the Notice of Jeopardy Assessment is the record of assessment. In cases where the tax is self-assessed and no Notice and Demand is issued, the record of assessment shall be the Tax Commission's processing record of the filing of the self-assessed return.

(3-20-97)

**04. Admission to Understatement of Tax.** A taxpayer may admit to an understatement of tax at any time. An admission is not considered a compromise of tax, and does not affect the statutory period of limitations for an audit or additional assessment or for a claim for refund filed by the taxpayer.

(3-20-97)

**301. -- 309. (RESERVED).**

**310. INTEREST RATES (RULE 310).**



# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

## STATE TAX COMMISSION

### Idaho Tax Commission Administration & Enforcement Rules

Docket No. 35-0201-0601

PENDING RULE

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(4-6-05)

## **02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
<u>Calendar Year 2007</u>	<u>7% simple interest</u>	<u>Revenue Ruling 2006-44</u>

(4-11-06)( )

## **(BREAK IN CONTINUITY OF SECTIONS)**

## **430. PENALTY FOR FAILURE TO FILE, FAILURE TO PAY, OR DELINQUENT FILING (RULE 430).**

Sections 63-3033 and 63-3046, Idaho Code.

(3-15-02)

## **01. In General.**

(2-23-01)

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION

### Idaho Tax Commission Administration & Enforcement Rules

Docket No. 35-0201-0601

PENDING RULE

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a. As used in this rule, due date means the date prescribed for filing without regard to extensions. (2-23-01)

b. A penalty of two percent (2%) of the tax due per month may be imposed on a taxpayer who fails to meet the extension criteria provided in Section 63-3033, Idaho Code. (2-23-01)

c. A penalty of five percent (5%) of the tax due per month, may be imposed on a taxpayer who files a delinquent return or who fails to file a return as provided in Section 63-3046, Idaho Code. (2-23-01)

d. If a taxpayer files a return but does not pay the tax due, a penalty of one-half percent (0.5%) of the tax due per month may be imposed. (2-23-01)

e. The penalties computed in this subsection may not exceed twenty-five percent (25%) of the tax due. (2-23-01)

f. For purposes of computing the penalties in Subsection 430.01, tax due includes subsequent adjustments. (2-23-01)

**02. Calculations of Penalty When a Taxpayer Satisfies the Extension of Time Criteria.** (2-23-01)

a. A taxpayer is entitled to an automatic extension of time for filing the Idaho income tax return if, by the due date, the taxpayer satisfies either of the following extension criteria provided in Section 63-3033, Idaho Code: (2-23-01)

i. Paying eighty percent (80%) of the total tax due on his income tax return when it is filed; or (2-23-01)

ii. Paying the total tax due on the income tax return for the prior year if one was filed. (2-23-01)

b. If the payment computed in Subsection 430.02.a. is fifty dollars (\$50) or less, a payment is not required to qualify for the extension. (3-15-02)

c. If the taxpayer satisfies the extension criteria, ~~and~~ files the return ~~and pays the tax~~ on or before the extended due date, and pays the tax with the return or before filing the return, no penalties apply. ~~(3-15-02)~~( )

d. If the taxpayer satisfies the extension criteria and files the return on or before the extended due date, but pays the tax after ~~the extended due date~~ filing the return, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return's extended due date is filed to the date the tax is paid. For returns filed in 2006, if the return is filed before July 1, 2006, but the tax due is not paid by that date, the late payment penalty shall apply from July 1, 2006 to the date the tax is paid. ~~(2-23-01)~~( )

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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PENDING RULE

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e. If the taxpayer satisfies the extension criteria but fails to file the return and pay the tax due on or before the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the return's extended due date to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed until the date the tax is paid. (3-15-02)

**03. Calculations of Penalty When a Taxpayer Fails to Satisfy the Extension of Time Criteria.** If a taxpayer fails to satisfy the extension criteria, the following penalties may apply: (2-23-01)

a. If the return is filed by the due date, but the tax is paid after the due date, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the return's due date to the date the tax is paid. (2-23-01)

b. If the return is filed and the tax is paid on or before the extended due date, a penalty of two percent (2%) of the tax due per month shall apply from the return's due date to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. (2-23-01)

c. If the return is filed after the extended due date but the tax is paid on or before the extended due date, a penalty of two percent (2%) of the tax due per month shall apply from the return's due date to the date the tax is paid. (2-23-01)

d. If the return is filed after the extended due date and the tax is paid after the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the due date of the return to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. (3-15-02)

**04. Other Penalties.** Imposing a penalty for failure to meet the extension criteria, failure to file a return timely, or failure to pay the tax due timely does not preclude the imposition of another penalty pursuant to Section 63-3046, Idaho Code. (2-23-01)

**05. Insufficient Postage.** The proper amount of prepaid postage is required on returns mailed to the Tax Commission. If a tax return is returned to the sender due to insufficient postage, it may result in the return becoming delinquent and subject to the delinquency penalty specified by Section 63-3046(c), Idaho Code. (3-20-97)

**06. Month Defined.** If the due date falls on the last day of a calendar month, each succeeding calendar month, or fraction of it, during which the failure to file continues constitutes a month. If the due date is not the last day of the calendar month, the period that ends with the same date of the next month constitutes a month. If the succeeding month has no corresponding date, the last day of the month is substituted. Any fraction of a month from the date ending the preceding monthly period to the date of payment constitutes a full month. (3-20-97)

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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**STATE TAX COMMISSION****Idaho Tax Commission Administration & Enforcement Rules****Docket No. 35-0201-0601****PENDING RULE**

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431. -- 499. (RESERVED).

**500. ADJUSTED OR COMPROMISED CASES -- CLOSING AGREEMENTS (RULE 500).**

Sections 63-3047 and 63-3048, Idaho Code. (3-20-97)

**01. Grounds for Compromise.** The Tax Commission may compromise the tax liability, penalties, or both, of a case if one (1) or more of the following circumstances exist: (3-20-97)

a. Doubt as to liability; (3-20-97)

b. Doubt as to collectibility; or (3-20-97)

c. Extreme hardship of the taxpayer. (3-20-97)

**02. Final Judgments.** The Tax Commission may not compromise the tax liability if the liability has been established by a final judgment of a court, and no doubt exists as to the taxpayer's ability to pay or the state's ability to collect the amounts owing. (3-20-97)

**03. Agreement Final.** A compromise agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer shall be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. (3-20-97)

**04. Form of Compromise.** The taxpayer must submit an offer of compromise in writing ~~and include a remittance in the amount of the offer~~. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission shall promptly notify the taxpayer. ~~(3-20-97)~~(\_\_\_\_)

**05. Withdrawal of Offer.** A taxpayer may withdraw his offer in compromise at any time prior to its acceptance by the Tax Commission. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).**

Sections 39-8405, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3634A, and 67-4917C, Idaho Code. ~~(4-11-06)~~(\_\_\_\_)

**01. Legislature.** The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the

# SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

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## STATE TAX COMMISSION

### Idaho Tax Commission Administration & Enforcement Rules

Docket No. 35-0201-0601

PENDING RULE

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Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

**02. Government Agencies or Officials.** The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

**03. Exchange of Information.** Information may be exchanged between the Tax Commission and: (4-5-00)

**a.** The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (5-3-03)( )

**b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)

**c.** County assessors, limited to: (3-20-04)

**i.** Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)

**ii.** Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)

**d.** Department of Commerce and Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)

**e.** Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)

**f.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)

**g.** Idaho Transportation Department, relating to: (3-20-04)

**i.** Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)

**ii.** Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)

**h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (5-3-03)( )

**i.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)

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- j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)
- k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
- l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
- m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
- n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
- o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)